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

F.A. No. 190 of 2022
IA No: CAN 2 of 2022
CAN 3 of 2024

Dr. Soma Mandal Debnath
Vs.
Sri Tanmoy Debnath

For the appellant	:	Mr. Pappu Adhikary, Mr. Somnath Banerjee, Mr. Pradip Pal
For the respondent	:	Mr. Ayan Mitra, Ms. Moumita Dhar
Heard on	:	11.12.2025 & 18.12.2025
Reserved on	:	18.12.2025
Judgment on	:	08.01.2026

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred by the plaintiff/appellant-wife against a judgment and decree whereby the learned Trial Judge dismissed the plaintiff's suit for divorce.

2. The marriage between the parties took place on June 18, 2007 under the Special Marriage Act, 1954 (hereinafter referred to as "the 1954 Act"). Upon such marriage, the appellant/wife moved to her matrimonial home at Sankrail, Howrah and started residing

there. The appellant, upon completion of her MBBS Course, joined nursing homes in and around Kolkata as medical attendant in the year 2008, after completion of her housestaffship.

3. In 2009, the appellant, then a practising doctor, joined the Manickchak Hospital at Malda as a Medical Officer and became permanent in the year 2010 at the Malda Bamungola Rural Hospital. Later on, in the year 2011, the appellant joined the West Bengal Health Services at Margram Public Health Centre in the District of Birbhum. However, she applied and got a posting at the Public Health Centre, Hazi St. Mollah, BPHC, Sankrail and resided in her matrimonial home.

4. In July, 2015, the appellant was transferred to Kurseong Sub-Divisional Hospital. Meanwhile, a son was born on October 24, 2011 to the parties in the said wedlock.

5. The wife alleged that she faced mental torture from her husband, that is the respondent, and his family while she was in her matrimonial home. The respondent/husband allegedly siphoned off a loan of Rs.23,00,000/- which the appellant took for construction of a house for the parties, for which the appellant/wife is still having to pay the EMIs. It is also alleged by the wife that she purchased a life insurance, for which she is having to pay the premium all along, without any contribution being made by the respondent/husband in that regard.

6. The wife alleges that the respondent-husband gave a false impression before marriage that he was an established businessman but later it was found that he is merely a day labour.

7. It is alleged by the appellant that the respondent/husband deserted her and her son in the year 2015, since when they have been living separately. Only occasionally, it is alleged, the husband used to visit the appellant/wife's quarter at Kurseong, merely for the purpose of extracting money from her. A major chunk of the wife's salary, allegedly, was taken by the respondent/husband. The appellant further alleges that the respondent did not visit the appellant or stood by her side throughout the period of unrest which befell Kurseong and the northern districts of West Bengal between June and October, 2017.

8. In the plaint, the appellant also alleged that the husband developed an intimate relationship with a married lady and the appellant apprehended sexual intercourse having taken place between the two. It is alleged that when the appellant protested, the husband blatantly gave out that he would continue with the relationship and the appellant/wife should not interfere. The said lady also was taken to a tour with the parties to Coochbehar, despite her husband not being able to go there. The appellant/wife alleges further that the respondent has no attachment to his son, who is being brought up entirely by the appellant/wife.

9. The respondent/husband, on the other hand, refutes such allegations and declares that he does not want divorce to be granted. According to the respondent/husband, he was in business but had to stop it due to the insistence of the appellant/wife, since she was earning enough to support the family. The respondent also alleges that he loves his son but the appellant prevents him from physically meeting the son, due to which he had to shift to Kurseong. It is alleged that, on the request of the appellant/wife, the respondent/husband went to Kurseong, where they celebrated their reunion on January 1, 2020 at a hotel named 'Amarjeet' in Kurseong, whereafter they started residing together regularly. However, the respondent alleges that due to the adamant behaviour of the appellant/wife and cases being filed by the wife against the husband and his mother under Sections 498A, 406 and 34 of the Indian Penal Code, he was compelled to stay elsewhere in Kurseong, at Nayabazar. The husband admits that he is working as a day labour in Kurseong, earning about Rs.300/- per day. It is further alleged by the husband that the transfer of the appellant/wife to Kurseong was a conscious decision for the welfare of the child, who would have a good education there.

10. The learned Trial Judge framed different issues, *inter alia* on the grounds of adultery, desertion and cruelty, and found against the plaintiff/appellant-wife on all such grounds, ultimately dismissing

the suit for divorce with the observation that the appellant was not happy residing with the respondent since there was a huge status gap between the parties, but that the dismissal of the suit would not confer any right on the respondent/husband to forcibly enter into the residential quarters or the premises of the plaintiff/wife wherever she might be residing or to force him on her or to annoy or disturb her in any manner.

11. Learned counsel appearing for the appellant/wife submits that the relationship between the parties was a mismatch from the very beginning. Although the appellant tried to adjust with the respondent and his family, despite having been duped by the respondent into believing that he was a businessman, which he was not, due to the mental torture meted out by the respondent and his family, she had to shift to Kurseong.

12. In the initial stages of the marriage, the appellant took a *suo motu* decision to take her transfer back from Malda to Sankrail to tend to her mother-in-law. However, when living together became impossible, she had to shift to Kurseong on transfer.

13. Learned counsel for the appellant submits that the appellant categorically pleaded in her plaint that the respondent/husband has been going to her workplace in the hospital at Kurseong and has been abusing and maligning her, levelling allegations of unchastity against the appellant, all before her colleagues in the said hospital, which itself tantamounts to cruelty.

14. When the appellant, however, made an application for adducing evidence by her colleagues at Kurseong by video conferencing, such application was turned down by a one-line order, *vide* Order No.25 dated December 14, 2021 only on the ground that the Family Court (Trial Court) was not equipped with sufficient infrastructure to examine witnesses on video conference. Thus, the appellant was deprived from adducing vital evidence having relevant bearing on the suit, to prove the cruelty of the respondent/husband against her. Hence, the appellant has not only set up the illegality in the order dated December 14, 2021 as a ground in the appeal but has also taken out an independent application under Order XLI Rule 27 of the Code of Civil Procedure to adduce such evidence by citing her colleagues at Kurseong as witnesses, which was denied by the learned Trial Judge regarding the cruelty meted out by the respondent by abusing and maligning her before her colleagues in Kurseong, which is also pending before this Court.

15. Learned counsel for the appellant next contends that the wife did not categorically take adultery as a ground of divorce but the intimacy of the respondent with the lady-in-question was sought to be brought within the fold of cruelty, giving rise to reasonable apprehension of a sexual affair between the lady and the respondent/husband. However, the learned Trial Judge framed

the issue of adultery and decided the same against the appellant/wife.

16. Insofar as desertion is concerned, it is argued that since the year 2015 there has been no cohabitation between the parties, despite the husband having visited occasionally the wife at her workplace. Thus, no meaningful relationship continued between the parties after 2015 due to the abstinence of the husband from conjugal relation with the appellant, which gives rise to desertion.

17. It is further argued on behalf of the appellant that the mental cruelty alleged by the appellant having not been specifically denied by the respondent, the learned Trial Judge ought to have granted a divorce on the ground of cruelty.

18. Lastly, learned counsel for the appellant submits that the marriage between the parties has broken down irretrievably, which itself comes within the purview of cruelty, as envisaged under Section 27(1)(d) of the 1954 Act. In support of such contention, learned counsel for the appellant cites *Rakesh Raman v. Kavita*, reported at *(2023) 17 SCC 433*. Upon being put on notice by the court that it would consider the judgment of *Rinku Baheti v. Sandesh Sharda*, reported at *(2024) 12 SCR 1355*, learned counsel also cites the same and argues that in the said case, the Hon'ble Supreme Court

did not distinguish or overrule the proposition laid down in *Rakesh Raman (supra)*[1].

19. Learned counsel for the appellant also cites *V. Bhagat v. D. Bhagat (Mrs.)*, reported at *(1994) 1 SCC 337*, where the Hon'ble Supreme Court held that mental cruelty must be of such a nature, to be a ground for divorce, that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. While arriving at such conclusion, the Supreme Court held, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties of ever living together in case they are already living apart and all other relevant facts and circumstances which it was neither possible nor desirable for the Hon'ble Supreme Court to set out exhaustively. It was further held that what is cruelty in one case may not amount to cruelty in another and it is a matter to be determined in each case having regard to the facts and circumstances of that case.

20. By relying on the said judgment, it is argued that the tests of cruelty laid down therein are fully met in the present case.

21. Learned counsel for the respondent controverts the allegations of the appellant and argues that the husband has all along expressed his intention to live with the wife. Even in the year 2020, on the

---

1. ***Rakesh Raman v. Kavita*, reported at *(2023) 17 SCC 433***

request of the wife, the respondent/husband went to Kurseong and the parties had a celebration with their son in the 'Amarjeet' Hotel in Kurseong, whereafter they lived a conjugal life together, only for the respondent to be constrained to leave his wife and son due to allegations and complaints under provisions of criminal law being levelled against him and his mother by the appellant/wife. It is reiterated that there was never any breakdown of the marriage between the parties and even after filing of the suit, the parties have consistently lived together.

22. It is argued further that irretrievable breakdown of marriage, by itself, is not a ground recognized for divorce in Indian Law.

23. Learned counsel for the respondent further submits that the husband was a successful businessman and even recently, has started a business, although he was working as a day labour for some period.

24. It is submitted by the respondent/husband that he admitted in his written statement that some of the loan amounts for house construction was utilised for payment of club donations and LIC premiums. However, the appellant's father has a land in his own name and the loan taken for construction was taken by both the parties. The life insurance was opened by the appellant/wife, it is argued, by herself and the respondent/husband has nothing to it with the same.

25. It is pointed out that the allegation of adultery levelled by the appellant/wife was never proved in any manner whatsoever, nor was there any evidence of cruelty or desertion, as rightly observed by the learned Trial Judge.

26. It is reiterated that the respondent is still willing to live with his family and is eager to meet his son.

27. Upon hearing learned counsel for the parties, in our opinion, the following questions are required to be resolved in order to adjudicate the appeal:

(i) Whether any of the grounds for divorce alleged by the appellant against the respondent was proved on the basis of the materials on record;

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

(iii) Whether irretrievable breakdown of marriage is a valid ground for divorce under the Special Marriage Act, 1954.

28. The above issues are answered as follows:

(i) Whether any of the grounds for divorce alleged by the appellant against the respondent was proved on the basis of the materials on record

29. From the allegations in the plaint, it is clear that no specific ground of adultery was pleaded by the plaintiff/appellant/wife.

Although in Paragraph Nos.7 and 8 of the plaint, allegations were made that the respondent developed intimacy with a married lady and used to "chat intimately" with the lady in front of the appellant, which led to an apprehension in the mind of the appellant that the respondent was having voluntary sexual intercourse with the lady and when she protested, the respondent gave out that he would continue with the same and she should not interfere with the matter, threatening her of dire consequences and further that the lady travelled with the parties' family, where the closeness between the respondent and the lady became apparent, the said allegations pertained more to cruelty than to direct allegations of adultery as such. This becomes all the more prominent since in the final paragraphs of the plaint, particularly in Paragraph No. 14 thereof, the appellant/wife concluded her pleadings with the allegations that the act of desertion and cruelty of the appellant by the respondent are sufficient grounds for getting a decree of divorce, not take the ground of adultery as such. Hence, the framing of an issue on adultery was rather misconceived and beyond the pleadings.

30. Insofar as desertion is concerned, the appellant/wife has categorically alleged in Paragraph No. 6 of the plaint that after the transfer of the appellant to the Kurseong Sub-Divisional Hospital in the Month of July, 2015, the respondent practically deserted her except stray visits. It is further alleged that, on the plea of loss of

business, the respondent had hardly stayed for a day with the appellant after long gaps. Simultaneously, the appellant alleges that every such visit was in some interest of the respondent or the other and whenever the respondent visited, the purpose was to take a major portion of the salary of the appellant. It is further alleged that the respondent did not visit the appellant, nor cared for her or the son of the parties at all during the months of June to October, 2017, when there was a huge unrest in the District of Darjeeling, including Kurseong.

31. The husband deals with such allegations in Paragraph No.6 of the plaint in Paragraph No.5 of his written statement, where the statements made in Paragraph No.6 of the plaint are evasively denied by merely stating that those are entirely false. Apart from that, in Paragraph No.5 of the written statement, the respondent states that since after taking transfer to Kurseong till the beginning of "the construction" (apparently of the house for which loan was taken), the respondent stayed with the appellant most of the time at her official quarters in Kurseong and went to Kurseong from time to time at the time of construction of the house, talking to the appellant everyday through video calls and taking information about her.

32. However, no proof of such calls, either by way of call records or otherwise or corroborative evidence in that regard, has been brought on record by the respondent/husband. While dealing with

Paragraph Nos. 7 and 8 of the plaint, where categorical allegations of intimacy between the respondent and another married lady was levelled by the plaintiff/wife, the respondent, in Paragraph No. 6 of his written statement, merely states that the statements made in Paragraph Nos.7 and 8 of the plaint are false and imaginary, which tantamounts to a bald denial. There was no specific attempt to give proper explanation regarding the relation between the respondent and the said lady. The only positive statement made in Paragraph No.6 of the written statement of the respondent is that the lady alleged by the appellant is known to both the parties and she was more acquainted with the appellant and the plan for going to the tour with the said lady was done by the appellant. It is further stated that in each and every tour, they went for travelling like family friends and spent their time "by speaking dramatically dialogue and by telling stories" (whatever that means) and that the appellant was "highly interested" in the said matter.

33. Such explanation is not quite understandable. Moreover, no evidence has been brought in that regard to corroborate the pleading that the plan was of the appellant for the lady to be taken on tour with the family of the parties. Even the denial to the serious allegations of intimacy is, at best, evasive in nature and does not tantamount to a categorical and specific denial of each and every allegation with proper explanation.

34. In Paragraph No.11 of the plaint, the plaintiff/appellant/wife alleges that the respondent, in order to malign the reputation of the appellant, had not only started abusing the appellant at her workplace in presence of her colleagues at the Sub-Divisional Hospital at Kurseong, but also, to keep his estimate in the eyes of the respondent's family members, particularly his mother and sister and other relations, spread rumours regarding appellant's chastity. It is further alleged that the respondent even did not stop from terrorizing the appellant to kill her and the child and get the government service in her place. The said paragraph of the plaint is dealt with in Paragraph No.9 of the written statement. In the said paragraph, the respondent/husband merely stated that the statements made in Paragraph No.11 of the plaint are completely false and that his mother loves them sincerely and the respondent's sister too loves them dearly, although she has little contact with them but keeps information about the parties.

35. Thus, the denial of the specific and categorical allegations regarding the abuse by the respondent of the appellant at her workplace in presence of her colleagues in Kurseong and the spreading of rumour regarding the appellant's chastity and terrorising the appellant to kill her and their child to get the government service in her place, are, at the most, evasive. Hence, the allegations are established in any event by the doctrine of *non traverse*.

36. Furthermore, we cannot overlook the fact that *vide* Order No.25 dated December 14, 2021 passed in the divorce suit, the learned Trial Judge dismissed the specific application of the appellant/wife to adduce evidence of her colleagues at Kurseong in order to establish the allegations of cruelty in the form of abuse of the appellant by the respondent at her workplace, by way of video conferencing, was turned down by the learned Trial Judge by a single-liner, on the ground that the Trial Court was not equipped with sufficient infrastructure to examine witnesses on video conference, without exploring other avenues of utilising resources available with the judicial infrastructure in the said court, to permit such evidence to be adduced.

37. However, while dealing with the allegations of cruelty, the learned Trial Judge observed that the appellant/wife failed to prove her allegations of cruelty. While doing so, the learned Trial Judge resorted to his own perceptions and conjecture in recording in the impugned judgment : "experience shows that it is seldom that the wife forgets any serious act of cruelty for husband against her and that she generally remembers the occasion and the period of time when it occurred and how she coped with it". While so observing, the learned Trial Judge conveniently became oblivious of the specific allegations in the plaint, as corroborated in the Examination-in-Chief of the wife, that the respondent/husband had abused her in her workplace. Furthermore, the learned Trial

Judge having himself refused to permit oral evidence through video conferencing on the flimsy ground of lack of infrastructure, could not have drawn adverse inference against the appellant/wife on the self-same ground of not having adduced evidence in respect of such cruelty.

38. We would have otherwise allowed the application under Order XLI Rule 27 of the Code and permitted such additional evidence to be adduced, unless we would otherwise find that the judgment and decree passed by the learned Trial Judge was bad in law, as would be evident from the discussion which follows.

39. On desertion, the respondent does not deny that the parties have in general lived separately since the transfer of the wife to Kurseong in the year 2015, apart from stray visits by the respondent/husband to the appellant's official quarters.

40. The respondent further alleges a specific incident when he went to Kurseong on the request of the appellant/wife and had a gala time celebrating at one 'Amarjeet' hotel at Kurseong on January 1, 2020, after which he allegedly started living with the wife in her official quarters till he was constrained to leave due to the allegations by the appellant.

41. Not a single piece of corroborative evidence, either documentary or oral, has been brought on record by the respondent/husband to substantiate such incident or his living together with the appellant/wife at any point of time after 2015.

42. The respondent could easily furnish some documentary evidence by way of receipts/bills of the Amarjeet Hotel, where they allegedly "celebrated their reunion". If the respondent/husband has been residing at Kurseong with the wife, some documentary evidence in that regard could have been brought on record by the respondent, at least to establish facets of daily life. It cannot be that during such stay, the respondent did not purchase any day-to-day item from the neighbouring stores near the quarters of the appellant/wife at Kurseong or had any interaction with any person during such stay who would corroborate his allegation. Thus, the absence of any such material, either documentary or oral, belies the assertion of the respondent/husband of having celebrated on January 1, 2020 in Kurseong or having ever spent conjugal time with the wife at her official residence in Kurseong.

43. Mere stray visits, once in a blue moon, cannot be equated with living a conjugal life together as husband and wife. Hence, the allegation of desertion has been substantially proved by the appellant/wife.

44. It has to be borne in mind that in civil proceedings, including matrimonial matters, the yardstick to be applied for appreciation of evidence is that of preponderance of probabilities. Unlike a criminal case, the allegations are not required to be proved beyond reasonable doubt. Proceeding from such perspective, we find sufficient evidence on record to clinch the ground of desertion as

well as cruelty from the evidence on record as well as by applying the doctrine of *non traverse*, as discussed earlier.

45. Also, we are unable to lend much credibility to the evidence of the respondent/husband in view of the inherent contradictions in his pleadings and evidence.

46. For example, the husband has consistently claimed that he was in business. It has also been submitted from the Bar during arguments that he has again resumed business. Neither has the respondent produced an iota or document or oral evidence to substantiate such claim in the Trial Court nor has any application for production of additional evidence to show his resumption of business recently been taken out before this Court in the present appeal.

47. On the contrary, the husband, in the affidavit supporting his written statement, has described himself to be unemployed. Again, in the cross-examination of the husband dated March 31, 2022, he categorically admitted that he earns Rs.300/- per day as day-labour under one Gopinath, under whom he had been working for the last four months as on the date of adducing evidence. Not stopping there, he reiterated even in his cross-examination that before working as day labour, he had a business. In the same breath, however, the respondent/husband admitted in such cross-examination that he cannot say the turnover of his business, never paid income tax and never filed income tax return. In a hopeless

bid to explain away such admission, the respondent/husband then volunteered further to say that his wife did not allow him to file income tax return, which is a ridiculous allegation, since there could not be any conceivable reason for the appellant/wife not to permit the respondent/husband, an alleged businessman, to file his income tax return.

48. Thus, the respondent all along seeks to mask his unemployed status by claiming to have had a business. In his pleadings as well as in his Evidence-in-Chief, the respondent/husband insinuates that it is due to the insistence of the respondent/wife, as she earns sufficiently, that he had to stop his business. We stop for a moment to ask ourselves whether the said allegation, in the patriarchal social context of Indian society, is a credible allegation. Even keeping aside the fact that such allegation was never proved in evidence by the husband, we do not find an iota of credibility to such wild allegation, particularly when the appellant/wife was having to bear the brunt of repaying the instalments of the loan of Rs.23,00,000/- taken for construction of a house, a chunk of which was admitted by the respondent/husband to have been used for donations to clubs and repayment of life insurance premium. It is all along the appellant/wife who has been earning, being a medical professional, and the husband who has been living off the income of the appellant/wife. In such circumstances, there could be no plausible reason why the appellant would insist and

force her husband to stop his running business to look after the family.

49. Even otherwise, admittedly the husband only occasionally visited the wife at Kurseong. Thus, the respondent/husband having never lived with his wife and son consistently, the allegation of him stopping his business on the insistence of the wife to look after his family is also belied.

50. The husband alleged in his evidence that he had been looking after the construction for some time, seeking to explain away his absence from his family on such ground. However, not a single scrap of paper regarding such construction was produced by way of evidence by the respondent/husband.

51. The husband also sought to embellish his pleadings by making allegations which are entirely beyond the written statement in his evidence. The entire episode of the husband visiting the appellant on her insistence and having a celebration and living together in Kurseong on and from January 1, 2020 is concocted, being beyond the pleadings and unsubstantiated by any corroborative evidence.

52. On the other hand, the allegations of the wife regarding the consistent attempts of the husband to malign her in her workplace at Kurseong was sought to be substantiated by her by filing an application for adduction of evidence of her colleagues through video conferencing, which was turned down by the learned Trial Judge himself on the flimsy pretext of the infrastructure for video

conferencing not being available with the Trial Court. Hence, no adverse presumption can be drawn against the appellant; rather, her *bona fides* in trying to prove her case of cruelty on such ground is clearly demonstrated by her application to adduce evidence by video conferencing in support of the allegations of her abuse in her workplace, as well as her application under Order XLI Rule 27 of the Code of Civil Procedure before this Court.

53. It is quite obvious that the witnesses in Kurseong, being themselves connected with the medical professional and busy otherwise, would only be available in virtual mode to adduce evidence and not have the time or the inclination if compelled to come to the Family Court at Calcutta to adduce evidence. Thus, it is clear from the records that the allegations of cruelty made by the appellant, also being not categorically and specifically denied in the written statement, were sufficiently substantiated by her.

54. On the contrary, the husband admitted in his cross-examination that Rs.1,20,000/- per year is being spent by the appellant for the education of their son and that the wife is paying the insurance premia as well as repaying the loan.

55. The respondent is non-committal in stating that the life insurance was opened by the appellant/wife by herself.

56. In view of the above, this Court is of the opinion that both the grounds of desertion and cruelty were substantially proved by the appellant/wife from the materials already on record.

(ii) Whether the marriage between the parties has broken down irretrievably

57. We make it clear at the outset that this Court is conscious of the fact that the respondent should not be penalised by a decree of divorce merely on the ground of his poverty, which would by itself be a gross cruelty meted out by the court on the respondent. Also, it is well-settled that a party cannot take advantage of his/her own wrong. Therefore, merely because the appellant/wife does not want to live any more with the respondent due to the gap in the financial status of the parties, if the respondent/husband is genuinely willing to preserve the marriage, the marriage cannot be dissolved by the court.

58. However, simultaneously, while deciding a matrimonial proceeding, the court has to be pragmatic in its approach, examining the existing relationship between the parties in its true texture and not going by mere surmises or the court's own notions of what would be an ideal marital relationship. It is trite law that while assessing cruelty, it is not an ideal couple whom the court is considering but the parties before it, with their unique perceptions and in the backdrop of their social context.

59. Since *Rakesh Raman (supra)*[2] has included irretrievable breakdown of marriage within the ambit of cruelty, as a component thereof, we also have to proceed from such perspective.

60. In *V. Bhagat (supra)*[3], the Hon'ble Supreme Court laid down the standard with regard to cruelty. Reference to the Paragraph No.16 of the said judgment would be of utmost relevance here and, accordingly, we quote the same hereinbelow:

> *"**16.** Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made."*

61. Applying such tests, let us now assess the perception of the parties themselves on the issue.

62. In Paragraph No.11 of the written statement, the respondent/husband admits that the social status and lifestyle of the appellant/wife is much higher than that of the

---

2. ***Rakesh Raman v. Kavita*, reported at *(2023) 17 SCC 433***
3. ***V. Bhagat v. D. Bhagat (Mrs.), reported at (1994) 1 SCC 337***

respondent/husband. Apparently with a touch of sarcasm, a question is put in the said paragraph of the written statement of the husband as to how the appellant/wife can live with the respondent. More importantly, in the immediately succeeding sentence, the respondent/husband states that it is the appellant who is to decide if she shall live with the respondent.

63. The respondent, in his cross-examination dated March 31, 2022, claims that he has an educational degree of BA (Hons.) in History, although he did not produce any paper in support of the said claim. However, from his own admission, the respondent is not a naïve and ignorant person, unaware of the significance of the statements made in his written statement, the original of which was in Bengali vernacular, which is the mother tongue of the respondent/husband. Thus, the respondent must take full responsibility for the statements made in his written statement.

64. If the respondent/husband leaves it to the appellant/wife to decide whether the parties will live together, such caustic remark is a clear indication of the rot suffered in the relationship between the parties.

65. It is an admitted position that the wife is a practising doctor and is the only earning member of the family, bearing the burden of the educational expenses of the son, which is admitted by the husband in his cross-examination to be about Rs.1,20,000/ per annum, at least as on March 31, 2022, the date of his cross-examination.

Moreover, it is admitted that the appellant/wife is repaying the instalments of the loan of Rs.23,00.000/-, which never fructified in construction of a house, and is also having to pay the life insurance premia.

66. The social mismatch between the parties is further obvious since the husband is admittedly a day labour, earning Rs.300/- per day since four months before March 31, 2022, the date of his cross-examination. Nothing comes forth before the court as to the husband ever having any business at all, or any income worth the name.

67. We do not rely much on the alleged fraud practised upon the appellant as to the status of the appellant, since the appellant/wife herself has condoned the same by giving a try at living together as spouses. However, the said "trial" has obviously culminated in an "error", since the parties have been living separately for all practical purposes since the year 2015, when the wife was transferred to Kurseong. The wife is admittedly living with her son and taking care of the minor son, including his educational and other expenses.

68. The best case made out by the respondent is that he occasionally visited the wife during the relevant period, which the wife portrays to be stray visits merely for the purpose of extracting money from her. Be that as it may, fact remains that such stray visits cannot tantamount to living a conjugal life worth the name between the

parties. Hence, every element of irretrievable breakdown of the marriage between the parties is borne out by the materials on record.

69. The marriage between the parties has obviously reached a *cul de sac* and has spent its shelf-life long back. A dead marriage cannot be revived merely by refusing a divorce decree to the wife, which would only result in further agony in the personal lives of both the parties, since a situation would then arise that although the marriage would survive in name, but marital bliss would remain forever beyond the reach of both parties.

70. Even in the concluding portion of the impugned judgment, the learned Trial Judge recognized that this is a case of an unfortunate mismatch of the parties but merely for want of proper evidence of cruelty or adultery or desertion, it would not be possible to give relief to the plaintiff/appellant. The trial court recognized that there is a huge status gap between the parties and was even of the opinion that the appellant/wife was not happy residing with the respondent/husband. The learned Trial Judge went on further to observe that the dismissal of the suit would not confer any right on the respondent/husband to forcibly enter into the residential quarters or premises of the appellant/wife wherever she might be residing or to force himself on her or to annoy or disturb her in any manner. However, such final observations merely operate as a consolation to the judicial conscience of the court but do not

fructify in a specific decree of injunction in that regard. In any event, no such injunction can be granted after the divorce itself is refused, since it would be a patent contradiction in terms that a divorce suit is dismissed, whereby the marriage still subsists, but the court restrains one of the parties from asserting conjugal rights in respect of the other.

71. Thus, the observations of the learned Trial Judge as well as the materials on records go on to show beyond reasonable doubt that the marriage between the parties is long dead and it would be a travesty to sustain the same merely on technicalities.

72. The respondent/husband twice reiterates in Paragraph No.11 of his written statement that he does not want a divorce. However, the said statement is immediately followed by his assertion that he may be allowed to keep contact with his son (as opposed to his wife) and take information about his whereabouts and education and talk with him. Hence, the refusal of the respondent/husband to accede to a divorce is premised on his rights to meet his son and not on the subsistence of a happy conjugal relationship between the parties.

73. Congeniality and some amount of sacrifice and adjustment are pre-conditions of any relationship, including matrimonial life. When the convivial atmosphere is lost in a matrimonial relationship and all empathy dries up, nothing remains in the marriage for it to be sustained. Hence, from the materials on

record and the pleadings, this Court is of the clear opinion that the marriage between the parties has broken down irretrievably.

(iii) Whether irretrievable break down of marriage is a valid ground for divorce under the Special Marriage Act, 1954

74. The question which remains to be considered is whether irretrievable breakdown of marriage can be cited as a ground of divorce under the Special Marriage Act, 1954.

75. The ground of cruelty as enumerated in Section 13(1)(i-a) of the Hindu Marriage Act, 1955, is similar in language to the ground of cruelty as stipulated in Section 27(1)(d) of the 1954 Act, under which the parties are governed.

76. While adjudicating on the specific issue as whether irretrievable breakdown of marriage can be a ground of divorce under Section 13(1)(i-a) of the Hindu Marriage Act, the Hon'ble Supreme Court observed in *Rakesh Raman (supra)*[4] that such ingredient has to be read into the ground of cruelty as provided in the statute.

77. It is common knowledge that irretrievable breakdown of marriage is still not a standalone and independent ground of divorce under either the Hindu Marriage Act or the Special Marriage Act in India, although certain other countries such as the United Kingdom have long recognized the same as a ground for divorce. Even the Hon'ble Supreme Court of our country, in multiple judgments, has

---

4. ***Rakesh Raman v. Kavita*****, reported at** ***(2023) 17 SCC 433***

recommended insertion of the said ground as one of the valid grounds of divorce in Indian Law. However, the Parliament, in its wisdom, has till date resisted such recommendation. Thus, it cannot be in doubt that the said ground is not an enumerated ground of divorce under the 1954 Act, with which we are now concerned.

78. However, we are required to look into the law-making power of the Hon'ble Supreme Court in this context. Article 141 of the Constitution of India is captioned as "Law declared by Supreme Court to be binding on all courts". The body of the said provision stipulates that "the law declared by the Supreme Court shall be binding on all courts within the territory of India".

79. Let us now consider, in such context, the effect of *Rakesh Raman (supra)*[5] as a precedent on the question at hand. It would be profitable here to refer to some of the paragraphs of *Rakesh Raman (supra)*[5], which we do 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 solemnisation of the marriage treated the petitioner with cruelty" [Section 13(1)(i-a) of the Hindu Marriage Act, 1955] .*
>
> ***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*

---

5. ***Rakesh Raman v. Kavita*, reported at *(2023) 17 SCC 433***

ground for dissolution of marriage under Section 13(1)(i-a) of the Act."

80. In Paragraph No.26 of the said judgment, the Hon'ble Supreme Court quotes excerpts from *Samar Ghosh v. Jaya Ghosh*, reported at *(2007) 4 SCC 511*. Inter alia, Clause (xiv) of Paragraph No.101 of *Samar Ghosh (supra)*[6] is also quoted. The said excerpt is given hereinbelow:

> *"101. … (i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.*
>
> * * *
>
> *(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.*
>
> *(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.*
>
> *(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."*

81. With our limited legal acumen, we must acknowledge that *Rakesh Raman (supra)*[7] is a progressive and bold landmark stride in the history of matrimonial law in India, for the first time recognizing irretrievable breakdown of marriage to be an essential component of the ground of 'cruelty' as envisaged in Indian Matrimonial Laws.

---

6. ***Samar Ghosh v. Jaya Ghosh*, reported at *(2007) 4 SCC 511***
7. ***Rakesh Raman v. Kavita*, reported at *(2023) 17 SCC 433***

Although the judgment was rendered in the context of Section 13(1)(i-a) of the Hindu Marriage Act, 1955, since the language of the said Section is similar to Section 27(1)(d) of the 1954 Act, which governs the parties in the instant case, the same ratio applies to the present case as well.

82. The exposition of law in *Rakesh Raman (supra)*[8] was clearly under Article 141 of the Constitution of India, since the issue decided specifically arose for consideration and was adjudicated by the Hon'ble Supreme Court in the said case upon consideration at length the previous evolution of law in India in that regard.

83. An alternative argument arises as to whether in *Rinku Baheti (supra)*[9], the Hon'ble Supreme Court deviated from the proposition in *Rakesh Raman (supra)*[8]. With utmost respect, we are of the contrary view, since the issue which fell for consideration before the Hon'ble Supreme Court, before a Bench of similar strength as that which delivered the judgment in *Rakesh Raman*'s case, was whether, while deciding an application for transfer of a matrimonial suit made by the petitioner-wife under Section 25 of the Code of Civil Procedure, the Hon'ble Supreme Court had the power under Article 142 of the Constitution of India to grant a decree of divorce, going beyond the scope of the consideration before it. It is only in such context that the Hon'ble Supreme

---

8. ***Rakesh Raman v. Kavita*****, reported at** ***(2023) 17 SCC 433***
9. ***Rinku Baheti v. Sandesh Sharda, reported at (2024) 12 SCR 1355***

Court discussed several previous judgments to draw support for the proposition that it had the power under Article 142 to grant such relief if it was required in the context of the case.

84. Article 142(1) provides that the Supreme Court, in the exercise of its jurisdiction, may pass such decree or make such order as is necessary for doing complete justice in any case or matter pending before it and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by the Parliament and until the provision on that behalf is so made in such manner as the President may by order prescribe. Thus, even Article 142 has a statutory flavour, although subject to a Presidential order prescribing the modality of implementing the same.

85. In *Rinku Baheti (supra)*[10], among several other judgments, *Rakesh Raman (supra)*[11] was also referred to. While disscussing multiple previous judgments where divorce was granted under irretrievable breakdown of marriage under Article 142 of the Constitution of India, the Hon'ble Supreme Court also referred to *Rakesh Raman (supra)*.

86. It would be profitable in this regard to look into the headings under which the Hon'ble Supreme Court in *Rinku Baheti (supra)*[10], discussed such judgments. Immediately prior to Paragraph No.6

---

10. ***Rinku Baheti v. Sandesh Sharda, reported at (2024) 12 SCR 1355***
11. ***Rakesh Raman v. Kavita*, reported at *(2023) 17 SCC 433***

of *Rinku Baheti*'s case, the caption given is "Article 142(1) of the Constitution of India:". Before Paragraph No.7, the caption given was "Shilpa Sailesh:", referring to the synonymous judgment rendered earlier by the Hon'ble Supreme Court.

87. However, in contradistinction therewith, Paragraph No.8 and its sub-paragraphs was prefixed with the following caption: "Other orders/judgments on irretrievable breakdown of marriage:"

88. In sub-paragraph no.8.1, the Hon'ble Supreme Court observed that the exercise of power by the said court under Article 142(1) to grant a decree of divorce and the factors to be considered while doing so have varied with facts and circumstances of each case.

89. Thereafter, the relevant paragraphs of *Rakesh Raman (supra)*[12] were quoted without, however, specifying that the judgment in the said case was confined to Article 142(1) of the Constitution of India.

90. It is of cardinal importance to note that in all the subsequent sub-paragraphs of Paragraph No.8, from sub-paragraph no.8.2 onwards, several other judgments of the Hon'ble Supreme Court were discussed, in each of the cases specifically mentioning that the judgment in such case was passed under Article 142(1) of the Constitution of India. As opposed thereto, in Paragraph No.8.1, while dealing with *Rakesh Raman (supra)*[12], the Hon'ble Supreme

---

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

Court did not specifically mention that the said judgment was delivered under Article 142(1) of the Constitution of India.

91. That apart, since the judgment in *Rinku Baheti (supra)*[13] was delivered by a Two-Judge Bench, which was of equal strength as that which delivered *Rakesh Raman (supra)*[14], in the event the Hon'ble Supreme Court had the intention of differing from or overruling the proposition laid down in *Rakesh Raman (supra)*, it would obviously have done so by either doubting and referring the proposition laid down in *Rakesh Raman (supra)* to a Larger Bench or by specifically holding the same to be *per incuriam*, which having not been done, we have to go by the proposition of *Rakesh Raman (supra)* as the law laid down in the specific context under discussion in the instant case.

92. Moreover, it is a settled proposition of the law of precedence that if two separate judgments of the Hon'ble Supreme Court are placed before a High Court, the latter has to choose the one which is more apt in the circumstances of the case and is relevant on the issue at hand. Even applying such test (which undoubtedly is an unenviable one), it is the proposition laid down in *Rakesh Raman (supra)* under Article 141 of the Constitution of India, as opposed to *Rinku Baheti (supra)*, which was rendered in an entirely different context of whether divorce can be granted under Article 142 in an

---

13. ***Rinku Baheti v. Sandesh Sharda, reported at (2024) 12 SCR 1355***
14. ***Rakesh Raman v. Kavita*, reported at *(2023) 17 SCC 433***

application under Section 25 of the Code of Civil Procedure application, this Court is bound by the proposition laid down in *Rakesh Raman (supra)*.

93. Thus, the law as it stands now on the issue at hand is that irretrievable breakdown of marriage between the parties, although not a standalone ground of divorce under Indian law, is nonetheless an integral component of the ground of 'cruelty', which is one of the recognized and valid grounds of divorce under Indian Law, both under the Hindu Marriage Act and the Special Marriage Act.

94. Thus, this issue is decided in the affirmative, by holding that irretrievable breakdown of marriage, as a component of cruelty, is a valid ground of dissolution of marriage by divorce by all courts of India under the jurisdiction of the Hon'ble Supreme Court.

CONCLUSION

95. In view of the above discussions, this Court is of the clear opinion that the marriage between the parties has irretrievably broken down. Read in the context of the other observations made by us on the evidence on record and the pleadings of the parties, the grounds of cruelty as well as desertion have been clearly established by the plaintiff/appellant-wife. In fact, irretrievable breakdown of marriage, apart from being a component of cruelty, also qualifies as an integral component of desertion by each

spouse of the other, thus bringing it within the fold of not only cruelty but desertion as well.

96. Accordingly, F.A. No.190 of 2022 is allowed on contest, thereby setting aside the impugned judgment and decree dated August 3, 2022 passed by the learned Principal Judge, Family Court No.1 at Calcutta in Matrimonial Suit No.206 of 2018, and decreeing the said suit by granting dissolution of the marriage between the parties by a decree of divorce.

97. Simultaneously, keeping in view the rights of the respondent/husband and the welfare of the minor son of the parties, we hereby grant visitation right in respect of the minor son of the parties to the respondent/husband till the said minor son attains majority. The respondent/husband shall be entitled to visit the minor son of the parties once a month, on the first Sunday of each month, for a period of two hours between 3 p.m. and 5 p.m. If the respondent so approaches the appellant, the appellant/wife shall grant such exclusive visitation right to the respondent/husband in respect of the child. During the visitation hours, the respondent/husband shall have an interaction with his minor son in any public place within a radius of 2 km from the then residence of the appellant, without any interference by the appellant/wife. However, the parties shall strictly adhere to the timelines and the respondent shall return the son to the

appellant/wife within the appointed hour as per the above direction.

98. In the event, for some unforeseen reason, the visitation cannot be implemented by either of the parties, advance notice of at least 48 (forty-eight) hours shall be given by such party to the other, by arranging the next available Sunday in the same month for the purpose of the missed day of visitation. It is expected that the parties shall be sensitive to the sentiments of the minor child and shall not do anything which would be detrimental to the interest and welfare of the child.

99. Interim orders, if any, stand vacated.

100. There will be no order as to costs.

101. Consequentially, CAN 2 of 2022 and CAN 3 of 2024 are disposed of accordingly.

102. A formal decree be drawn up accordingly.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)