

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar**

FAT 68 of 2020

**Kamalika Majumdar Nee Das
Vs.
Subhapriya Majumdar**

For the Appellant : Mr. Supriya Ranjan Saha,
Mr. S.K. Mukherjee

For the Respondent : Mr. Dhiraj Trivedi, Ld. Sr. Adv.,
Mr. Dhananjay Banerjee,
Mr. Sunil Gupta
Ms. Shakshi Rathi,
Ms. Swapna Jha,
Mr. Shwetank S. Prasad,
Mr. Bikash Kr. Singh,
Ms. Katha Sarkar

Hearing concluded on : 15.05.2025

Judgment on : 11.06.2025

Uday Kumar, J.: -

1. This appeal, brought by Smt. Kamalika Das @ Kamalika Majumdar, the appellant/wife, challenges the Judgment and Decree dated November 21, 2019, and December 18, 2019, rendered by the Learned Additional District Judge, 2nd Court at Barrackpore. The impugned decision, arising from Matrimonial Suit No. 912 of 2012, dissolved the marriage between the parties by a decree of divorce. The appellant asserts that the learned Trial Court fundamentally misconstrued both factual realities and

governing legal principles, thereby necessitating a comprehensive review by this Court.

- 2.** The marital journey, which forms the genesis of this dispute, commenced on January 21, 2010, with a solemnization at Dakshineswar Maa Kali Temple, followed by registration on April 17, 2010. A male child was born to the couple on September 30, 2010. While the husband claimed to have disclosed his divorcee status prior to the marriage, this very assertion would later become a contentious battleground. Conjugal life began at the husband's residence in Agarpara, but the marital harmony proved fleeting. Within a mere six months, on July 14, 2010, the wife departed the matrimonial home, an act that undeniably ignited the present matrimonial dispute.
- 3.** The husband initiated Matrimonial Suit No. 912 of 2012, seeking the dissolution of his marriage on the grounds of cruelty and desertion, as defined under Section 13(1)(ia) and Section 13(1)(ib) of the Hindu Marriage Act, 1955. His petition painted a picture of distress, alleging that shortly after the marriage, the wife denied conjugal rights, employed "filthy language," and exhibited marked disrespect towards him and his elderly septuagenarian mother. A substantial part of his claim rested on the wife's purported neglect of household duties, attributed to her singular prioritization of her legal profession as a practising advocate. He further accused her of repeatedly threatening to file false cases, threats which, he contended, materialized into concrete actions, culminating in a false complaint under Section 498A IPC (Ghola P.S. Case No. 468/10).

Most significantly, he asserted that a false report lodged by her with his employer purportedly led to his job termination, causing him immense mental agony and severe reputational damage. According to the husband, these cumulative actions constituted profound mental and emotional torment, compelling him to seek the dissolution of their marital bond.

4. In stark opposition, the wife vehemently refuted all accusations of cruelty and desertion, presenting a detailed and compelling counter-narrative. She contended that the husband's divorce petition was nothing short of a malicious counterblast, strategically launched in response to her own legitimate legal actions, including proceedings under Section 498A IPC, the Domestic Violence Act, and for maintenance under Section 125 Cr.P.C. A cornerstone of her defence was the startling allegation of the husband's gross suppression of material facts concerning his two prior marriages - one having concluded in a 498A IPC compromise and the other in an ex-parte divorce, facts powerfully substantiated by Exhibits B and C. She asserted that this profound deceit, perpetrated at the very inception of their marriage, itself constituted an act of grave mental cruelty. Furthermore, the wife maintained that she herself was subjected to significant physical and mental cruelty by the husband and his family, detailing instances of dowry demands, physical assault, and humiliation. She categorically denied deserting him, asserting instead that she was forcibly expelled from the matrimonial home while pregnant and subsequently denied re-entry after the child's birth, despite her earnest

efforts to return. This, she argued, amounted to "constructive desertion" on the husband's part. She further claimed the husband questioned her moral character. She finally contended that her complaints to various authorities were legitimate actions undertaken to seek redressal and protection against the cruelty she endured, emphatically denying any responsibility for his job termination stemming from malicious intent.

- 5.** To substantiate his claims before the Learned Trial Court, the husband deposed as P.W.1. His oral testimony largely echoed the contents of his plaint, offering a series of omnibus allegations concerning assault, abuse, and threats, alongside the undisputed fact of three complaints lodged by the wife. He produced Exhibit 1 (G.D. Entry numbers) and, critically, Exhibits 2 and 3 (letters from his employer). Exhibit 2, notably, directly referenced the wife's complaint and recorded his service termination shortly thereafter, presented as direct evidence of cruelty.
- 6.** Conversely, the wife, testifying as O.P.W.1, unequivocally refuted the husband's allegations and bolstered her comprehensive defence with compelling documentary evidence. She produced Exhibits B and C, certified copies of proceedings related to the husband's two prior marriages, directly substantiating her claim of his concealed marital history and thereby significantly undermining his credibility. Exhibit F, a document demonstrating her approach to the Protection Officer at Howrah, powerfully evidenced her genuine efforts to seek reconciliation and resume cohabitation. Additionally, Exhibits G and H (G.D. Entry and Misc. Cases) attested to her recourse to legitimate legal channels, while

Exhibits I and J (medical ticket and police complaint) corroborated her testimony regarding alleged physical assault and abuse she endured.

- 7.** The Learned Trial Court framed six issues for adjudication, with issues 3 and 4, pertaining to cruelty and desertion, forming the core of the dispute. After reviewing the husband's affidavit (P.W.1), the Court acknowledged his claims of assault, abuse, and threats, including the wife's alleged exploitation of her legal profession to fabricate cases. The Court concluded that the wife's conduct of filing complaints, particularly the one leading to the husband's job termination, amounted to cruelty, finding it caused him "irreparable mental agony" and "lowered his prestige." The Trial Court's broad pronouncement declared that "The conduct on the part of the wife like complaining at different places itself is a conduct which amounts to cruelty." Furthermore, the Trial Court concluded that the wife had deserted the husband without any just cause, implicitly accepting his narrative that her actions compelled him to leave the matrimonial home, and finding that she failed to prove her forced refuge at her parental home. Consequently, the matrimonial suit was decreed in favour of the husband, dissolving the marriage based on these findings.
- 8.** Upon critical review, it is conspicuously evident that the impugned judgment suffers from a fundamental omission: it utterly failed to address or render any finding on the appellant's crucial evidence regarding the respondent's two prior marriages (Exhibits B and C). This glaring oversight points to a pervasive flaw in the Trial Court's holistic

appreciation of the evidence, indicating that a central and highly pertinent aspect of the wife's defence and her counter-claim of cruelty by the husband was left entirely unconsidered.

9. Being aggrieved, the Appellant/Wife has fervently challenged the divorce decree, asserting that the impugned judgment was fundamentally flawed - not merely for misinterpreting facts, but for a perverse disregard of the respondent's profound deceit regarding his prior marriages, a deception that, in her submission, constituted mental cruelty from the very inception of their union. She further argued that the Court egregiously erred by equating her legitimate pursuit of legal redress (under Section 498A IPC, the Domestic Violence Act, and Section 125 Cr.P.C.) with cruelty, without any conclusive proof of their falsity or malicious intent. Furthermore, the Trial Court's undue reliance on uncorroborated testimony and its palpable failure to holistically consider her serious counter-allegations of dowry demands and physical assault are central to her appeal. Finally, she disputes the finding of desertion, characterizing her withdrawal as "constructive desertion" due to the intolerable circumstances created by the husband, and highlights the court's failure to apply principles of estoppel, waiver, and acquiescence regarding the Respondent's prior knowledge of her profession.

10. Mr. Supriya Ranjan Saha, the learned advocate for the appellant/wife, presented a compelling argument that the Learned Trial Court fundamentally erred in granting a divorce decree by both misinterpreting facts and misapplying established legal principles. He contended that the

judgment was rendered perverse by its complete oversight of the respondent's profound deceit regarding his two prior marriages. This fundamental concealment, he forcefully asserted, constituted mental cruelty at the very inception of the marriage, irrevocably tainting the respondent's petition and undermining his credibility. Furthermore, Mr. Saha argued that the Trial Court erroneously equated the appellant's act of filing various legal proceedings (including charges under Section 498A IPC, Domestic Violence Act proceedings, and Section 125 Cr.P.C.) with cruelty.

11. He emphasized that merely initiating legal action cannot automatically constitute cruelty unless its falsity, frivolousness, scandalous nature, and malicious motivation are conclusively proven, which he contended the husband failed to do, citing the seminal judgment in *K. Srinivas Rao v. D.A. Deepa* (2013) 5 SCC 226. He sharply criticized the Trial Court's undue reliance on the husband's uncorroborated testimony regarding alleged abuse and threats, arguing it failed to meet a sufficiently stringent standard of proof, particularly given that *N.G. Dastane v. S. Dastane* AIR 1975 SC 1534 mandates credible and consistent evidence on a preponderance of probabilities.

12. He also asserted that admissions elicited during cross-examination about filing cases were misinterpreted in isolation, without considering the underlying context and potential provocations that compelled such actions. Mr. Saha further criticized the Trial Court's failure to adopt a holistic approach, which resulted in overlooking the wife's serious

counter-allegations of cruelty (including dowry demands and physical assault), a holistic assessment being unequivocally mandated by *Shobha Rani v. Madhukar Reddi* AIR 1988 SC 121.

13. He maintained that the appellant's actions should be reasonably interpreted as a legitimate response to the respondent's alleged cruelty, rather than an independent act of cruelty. He asserted that the Trial Court improperly penalized the appellant for exercising her fundamental right to seek legal redressal for perceived grievances, which, he argued, potentially arose directly from the respondent's own alleged misconduct. He contended that the Trial Court misapplied the legal definition of "mental cruelty" as expounded in *V. Bhagat v. D. Bhagat* AIR 1994 SC 710, arguing that the instances cited by the respondent, even if accepted as true, did not meet this stringent threshold. He underscored that those ordinary marital disagreements and the legitimate consequences of seeking legal recourse for genuine grievances should not be readily construed as severe mental cruelty warranting divorce. While the complaint leading to job termination might be deemed an act of cruelty, he emphasized it must be understood within the broader context of the husband's own, more severe, initial cruelty. He relied on *Samar Ghosh vs. Jaya Ghosh* [(2007) 4 SCC 511] and *Ravinder Kaur vs. Manjeet Singh (Dead)* [(2009) 8 SCC 308] to buttress his argument that minor misunderstandings or reactive complaints may not attain the threshold of severe cruelty, particularly when the petitioner himself is at fault.

- 14.** On the critical aspect of desertion, Mr. Saha vehemently argued that the wife's withdrawal was a direct consequence of intolerable circumstances created by the husband, thereby constituting "constructive desertion" as authoritatively recognized in *Jyotish Chandra Guha v. Smt. Meera Guha* AIR 1970 Cal 266. He highlighted the wife's active desire to return and her demonstrable attempts at reconciliation, which, in consonance with *Bipin Chandra Jaisinghbhai Shah v. Prabhawati* AIR 1957 SC 176, unequivocally negated any intention on her part to desert.
- 15.** Finally, Mr. Saha argued that the Trial Court failed to apply fundamental legal principles such as estoppel, waiver, and acquiescence regarding the husband's alleged awareness of the wife's profession. Accordingly, he sought the setting aside of the impugned judgment and decree due to these profound legal violations.
- 16.** Conversely, Mr. Dhiraj Trivedi, the learned Senior Counsel representing the respondent/husband, staunchly defended the impugned judgment. He asserted that the Trial Court rightly concluded that the appellant/wife had subjected the respondent/ husband to both egregious cruelty and wilful desertion, thereby warranting marriage dissolution. He contended that the wife's actions, particularly the "repeated and relentless filing of multiple false legal cases" (498A IPC, DV Act, 125 Cr.P.C.), combined with "malicious complaints to his employer", unequivocally constituted "severe and debilitating mental cruelty." He cited *K. Srinivas Rao v. D.A. Deepa* (2013) 5 SCC 226 and *Nidhi Kedia Nee Chokhani v. Abhyudaya Kedia* (2023 SCC OnLine 2657, paras 11, 12, 16, 18, 19, 20) to argue

that such false complaints, even if resulting in acquittal or discharge, inflict immense mental agony and humiliation, undoubtedly amounting to cruelty. The rationale in *Nidhi Kedia* emphatically underscores that continuous litigation and unsubstantiated allegations can indeed constitute mental cruelty, particularly when parties have lived separately for a significant period with no hope of reconciliation.

17. Mr. Trivedi further argued that the cumulative effect of the wife's actions rendered it impossible for the husband to lead a normal life, aligning precisely with *Samar Ghosh v. Jaya Ghosh*'s illustrative examples of mental cruelty. He contended that the Trial Court duly considered the wife's counter-allegations but found them unsubstantiated and insufficient to negate the husband's compelling plea for divorce. He also vigorously invoked the principle of "irretrievable breakdown of marriage," submitting that the prolonged separation of over 14 years and the relentless continuous litigation, including false complaints, unequivocally demonstrate that the marital bond is beyond repair. In this regard, he placed strong reliance on *Rakesh Raman v. Kavita* (2023 SCC OnLine SC 497, paras 19, 21), where the Hon'ble Supreme Court articulated that when a marriage has irretrievably broken down, persistent bitterness and animosity can be considered a form of cruelty, making it unjust to prolong the facade of such a broken marriage.

18. Mr. Trivedi emphasized that this concept, though not explicitly a ground under the Hindu Marriage Act, 1955, has been judicially read into the ground of cruelty under Section 13(1)(ia) by the Hon'ble Supreme Court.

He further referred to *Vikash Kanaujia v. Sarita* (2024 SCC OnLine SC 1699, paras 15-18), which affirmed dissolution of marriage under Article 142 of the Constitution where parties had lived separately for over 22 years with no possibility of cohabitation, reiterating that prolonged separation and multiple legal battles are undeniable indicators of irretrievable breakdown. He also cited (2013) 5 SCC 226 (*K. Srinivas Rao v. D.A. Deepa*), *Joydeep Majumdar vs Bharti Jaiswal Majumdar* (2021) 3 SCC 742 (paras 11-13), and *Vijay Kumar Ramachandra Bhate vs Neela Vijay Kumar Bhate* (2003) 6 SCC 334 (paras 7, 11), all broadly supporting the proposition that false accusations, harassment, and severe mental anguish caused by a spouse's conduct can constitute cruelty, and that prolonged separation can be indicative of a broken marriage.

19. Furthermore, Mr. Trivedi emphasized that the Trial Court appropriately relied on the husband's consistent and credible testimony, significantly corroborated by the wife's admissions during cross-examination regarding numerous legal cases and her evasive responses concerning employer complaints. He asserted the Trial Court was entirely justified in drawing adverse inferences from these admissions, viewing them as irrefutable evidence of mental cruelty, and applying the preponderance of probabilities standard of proof as recognized in *N.G. Dastane v. S. Dastane* AIR 1975 SC 1534. In support of the finding of desertion, he argued that the Trial Court correctly concluded the wife had deserted the husband without just cause. He highlighted the irrefutable evidence, including the wife's admission of no genuine effort to communicate or

reconcile since 2010, which clearly established her intention to desert (*animus deserendi*). This aligns precisely with *Bipin Chandra Jaisinghbhai Shah v. Prabhawati* AIR 1957 SC 176. He maintained that the wife/appellant failed to provide any credible justification for her prolonged separation and vehemently refuted any suggestion of constructive desertion, asserting that the husband's conduct did not create an unbearable environment as per *Jyotish Chandra Guha v. Smt. Meera Guha* AIR 1970 Cal 266.

20. Mr. Trivedi concluded by firmly asserting that the impugned judgment was just, proper, and meticulously based on a correct and thorough appreciation of evidence and a sound application of relevant legal principles. He urged this Hon'ble Court to dismiss the appeal as entirely lacking legal or factual merit.

21. Based on the pleadings and the compelling arguments presented by learned counsel, the fundamental questions demanding our determination in this appeal are:

- a. Did the Learned Trial Court err in granting a decree of divorce to the respondent/husband on the grounds of cruelty and desertion purportedly committed by the appellant/wife?
- b. Should a divorce decree be granted in a marriage that has demonstrably fractured over more than a decade (over 14 years in this case, since July 2010), particularly considering the Hon'ble Supreme Court's pronouncements on "irretrievable

breakdown of marriage," and bearing in mind the welfare of the minor son?

- 22.** Addressing the allegations of cruelty, we acknowledge that Exhibit 2 (the employer's letter) and the subsequent job termination, if proven to be based on false and malicious acts of the wife, could indeed constitute cruelty, consistent with the principles enunciated in *K. Srinivas Rao v. D.A. Deepa* and *Nidhi Kedia Nee Chokhani v. Abhyudaya Kedia*. However, the husband's other claims of general assault, abuse, and threats conspicuously lacked specific instances or independent corroboration, thus falling short of establishing cruelty in law. More critically, regarding the three complaints admittedly filed by the wife, the husband failed to conclusively prove their "absolute falsity and malicious intent."
- 23.** The wife's consistent testimony suggested these complaints were merely reactive measures to remedy perceived grievances, including alleged dowry demands, physical assault (supported by Exhibits I & J), and abandonment. As *Ravinder Kaur vs. Manjeet Singh (Dead)* underscores, mere unsubstantiated claims are insufficient to prove cruelty. A party legitimately resorting to legal means for genuinely perceived grievances cannot automatically be branded as having committed cruelty, unless the primary motivation is demonstrably malicious harassment devoid of any justifiable basis. The Trial Court's sweeping conclusion that "The conduct on the part of the wife like complaining at different places itself is a conduct which amounts to cruelty" fundamentally misapplied these principles by overlooking the crucial requirement of malice and falsity.

24. Furthermore, a glaring and fundamental error, which regrettably vitiates the Trial Court's judgment, was its complete silence and non-consideration of the husband's two prior marriages (Exhibits B and C). This deliberate suppression of such a crucial and material fact concerning one's marital history at the solemnization of marriage, especially when it involved a contentious prior dissolution and criminal proceedings (a 498A IPC case), constitutes profound and inexcusable mental cruelty to the appellant. This deceit strikes at the very core of the matrimonial relationship, irrevocably undermining its foundation of trust and severely impacting the wife's fundamental rights and well-being. This aligns squarely with the broader understanding of mental cruelty, as meticulously elaborated in *Samar Ghosh vs. Jaya Ghosh* (particularly paragraphs 45-50), which defines mental cruelty as continuous ill-treatment or circumstances rendering cohabitation impossible due to the other party's conduct, a definition that undeniably encompasses fundamental deception about one's marital status. Moreover, this profound deceit casts significant doubt on the husband's credibility and his moral standing to seek a divorce decree from this Court. The husband has failed to prove that he had disclosed about such earlier marital relationships to the appellant/wife.

25. While acknowledging that the wife's complaint leading to the husband's job termination was indeed an act that could constitute cruelty on her part, this Court views it within the larger, overarching context of the husband's own conduct. The husband's cruelty, particularly the

foundational deceit regarding his marital status at the very inception of the marriage, is deemed an act of far greater magnitude. The principle of "clean hands" is paramount here; a party seeking equitable relief, such as divorce, is unequivocally expected to approach the Court free from their own substantial misconduct directly related to the subject matter. The husband's deliberate suppression of his prior marriages directly impaired his credibility and moral standing in seeking divorce.

26. That apart, although the wife's complaint to the respondent/husband's employer was closely followed by his termination from his job, nothing comes forth in evidence to conclusively correlate the two. The termination letter issued to the respondent/husband by his employer does not cite the wife's complaint as a reason for such termination.

27. Regarding the issue of desertion, we find the Trial Court's conclusion to be fundamentally erroneous and unsupported by the evidence. The evidence, particularly the wife's unwavering testimony that she was sent to her paternal home while pregnant and subsequently refused re-entry, powerfully countered the husband's claim of desertion. Her active steps to seek reconciliation, such as approaching the Protection Officer (Exhibit F) and initiating other proceedings (Exhibits G & H) to assert her right to return, unequivocally demonstrated an *animus revertendi* (intention to return) on her part. As per *Savitri Pandey v. Prem Chandra Pandey* and *Bipin Chandra Jaisinghbai Shah v. Prabhawati* AIR 1957 SC 176, a core requirement for establishing desertion is the irrefutable proof of both the factum of separation and the *animus deserendi* (intention to bring

cohabitation permanently to an end) by the abandoning spouse. The husband failed to discharge this burden. Instead, his actions of refusing her re-entry and allegedly changing his residence strongly indicated abandonment or "constructive desertion" on his part. This aligns with the principles enunciated in *Jyotish Chandra Guha v. Smt. Meera Guha* AIR 1970 Cal 266, which holds that the conduct of one spouse compelling the other to leave the matrimonial home constitutes constructive desertion. The husband's actions, by allegedly forcing the wife out and then preventing her return, convincingly suggest that he was the one who abandoned her or constructively deserted her. Therefore, the Trial Court's finding on desertion is not supported by the evidence on record and is contrary to the established legal principles; thus, the ground of desertion alleged by the husband stands unsubstantiated.

28. Finally, we turn to the argument for divorce based on "irretrievable breakdown of marriage," as passionately advanced by the learned Senior Counsel for the husband. He has judiciously relied on a catena of decisions of the Hon'ble Supreme Court, including *Rakesh Raman v. Kavita* (2023 SCC OnLine SC 497, paras 19, 21), *Vikash Kanaujia v. Sarita* (2024 SCC OnLine SC 1699, paras 15-18), *K. Srinivas Rao v. D.A. Deepa* (2013) 5 SCC 226 (specifically noting the inference of cruelty from prolonged separation), *Joydeep Majumdar vs Bharti Jaiswal Majumdar* (2021) 3 SCC 742 (paras 11-13), and *Vijay Kumar Ramachandra Bhate vs Neela Vijay Kumar Bhate* (2003) 6 SCC 334 (paras 7, 11). These precedents broadly underscore that false accusations, harassment,

severe mental anguish caused by a spouse's conduct, and prolonged separation can indeed indicate a profound fracturing of the marital bond. It is undeniable that the parties have been living separately for over 14 years (since July 2010), and their male child, born in September 2010, is now approaching 15 years of age. While this long period of separation, coupled with continuous litigation and a discernible lack of emotional bond, might, in many circumstances, strongly indicate an irretrievable breakdown of the marital bond, warranting intervention by the Hon'ble Supreme Court under Article 142 of the Constitution as observed in *Shilpa Shailesh v. Varun Sreenivasan* (2023 SCC OnLine SC 588), a crucial caveat endures. The fundamental purpose of Article 142 is to "do complete justice," and this extraordinary discretionary power is not to be deployed to allow a party to benefit from their own egregious wrong. As emphatically held by the Hon'ble Supreme Court in *Prabhavathi @ Prabhamani v Lakshmeesha MC* (2024 SCC OnLine SC 295), the "bogey of irretrievable breakdown of marriage cannot be used to the advantage of a party who is solely responsible for tearing down the marital relationship." Irretrievable breakdown, therefore, should not be weaponized by Courts to grant divorce where one party is solely responsible for the breakdown and stands to derive undue benefit from their own misconduct.

29. In the present case, the husband's profound initial deception, which represents a foundational breach of trust and a severe act of cruelty, unequivocally constitutes such a grave wrong. Consequently, while the marriage may undeniably appear to be irretrievably broken down in

reality due to the prolonged separation and ongoing discord, this Court, acting within its appellate jurisdiction and meticulously considering the husband's prior conduct and the welfare of the minor son, finds that granting a divorce decree in his favour would constitute a grave miscarriage of justice. The cited precedents (e.g., *Rakesh Raman*, *Vikash Kanaujia*, etc.), while acknowledging irretrievable breakdown as a basis for divorce, particularly under Article 142, do not, and indeed cannot, sanction the grant of relief to a party who has himself engaged in a fundamental breach of trust and perpetrated severe initial cruelty upon the other spouse, thereby being the principal architect of the marital distress.

30. In view of the cumulative effect of the evidence presented and a holistic application of matrimonial law principles, we find the Trial Court's judgment fundamentally flawed. This flaw arises from its abject failure to consider the husband's significant act of cruelty (the suppression of prior marriages) and its clear misapplication of the law regarding desertion. The husband's conduct of deliberate deceit at the outset of the marriage is a substantial factor that profoundly outweighs the alleged cruelty by the wife, especially when her actions (filing complaints) are viewed in their proper context—as a reaction to perceived grievances rather than malicious harassment devoid of any justifiable basis. The evidence unequivocally indicates that the husband failed to prove the essential elements of cruelty and desertion by the wife as stringently required for a divorce decree under Section 13 of the Hindu Marriage Act, 1955. The

overall conduct of the husband, particularly his initial deception, squarely places him in a position where he cannot be granted the equitable relief of divorce. To do so would undermine the very essence of justice and regrettably embolden deceit within matrimonial relationships. Therefore, the appeal must triumph, and the divorce decree must be unequivocally set aside.

31. Based on this comprehensive evaluation of facts in proper legal context and a nuanced application of legal principles, including the Hon'ble Supreme Court's pronouncements on irretrievable breakdown of marriage, this Court determines that the scales of justice demand a reversal of the impugned decree. While the extended period of separation (over 14 years since July 2010) and the mutual allegations regrettably suggest a factual breakdown of the marital relationship, the husband's foundational deceit concerning his marital history stands as a severe act of cruelty that cannot be overlooked, and consequently, his petition for divorce cannot be sustained. Allowing the divorce would be tantamount to permitting a party to manifestly benefit from their own egregious wrong.

32. Consequently, we conclude that a divorce decree cannot be granted to a party (petitioner) who perpetrated foundational cruelty (e.g., deliberate marital deception) of greater magnitude than any alleged misconduct by the other spouse, even if the marriage is irretrievably broken down, as it would constitute a miscarriage of justice and violate the principle of "clean hands".

- 33.** Therefore, the appeal, being FAT 68 of 2020, is allowed on contest.
- 34.** The Judgment and Decree dated November 21, 2019 passed by the Learned Additional District Judge, 2nd Court at Barrackpore, in Matrimonial Suit No. 912 of 2012 (C-905 of 2014) are hereby set aside.
- 35.** Accordingly, the Matrimonial Suit No. 912 of 2012 (C-905 of 2014) filed by the respondent/husband is dismissed.
- 36.** There shall be no order as to costs.
- 37.** Interim order/orders, if any, stand vacated.
- 38.** Pending application/ applications, if any, are disposed of accordingly.
- 39.** A formal decree be drawn up accordingly.
- 40.** Let a copy of this judgment along with the Lower Court Records be sent down to the Learned Trial Court forthwith.
- 41.** Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with all formalities.

I Agree

(Sabyasachi Bhattacharyya, J)

(Uday Kumar, J)