

Raja Sadhukhan vs Smt. Rakhi Sadhukhan on 25 June, 2019

Author: I. P. Mukerji

Bench: I. P. Mukerji

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25.06.2019

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Asr

F.A.T 122 of 2015

With

CAN 2813 of 2015

With

CAN 9251 of 2016

With

CAN 4505 of 2015

Raja Sadhukhan

Versus

Smt. Rakhi Sadhukhan

Mr. Siddartha Mitra, Sr. Advocate

Mr. Debapriya Gupta

Ms. Sucharita Biswas

.....for the appellant

Ms. Sutapa Sanyal

Mr. Debrup Bhattacharjee

.....for the respondent

This is an appeal by the appellant/husband against the judgement and decree dated 10th February, 2015 passed by the Court below refusing to grant a decree of dissolution of marriage by divorce, in the suit filed by the appellant.

The principle ground for instituting the suit was alleged cruelty inflicted by the wife on the husband. It was under Section 27 of the Special Marriage Act, 1954.

We have gone through the impugned judgement and decree. We have perused the evidence.

The law is very clear on the subject. Any act, whether it is action or speech or behaviour which reaches substantial mental pain or anguish to a person can be said to be result in infliction of mental cruelty. The circumstances in which the inference of mental cruelty can be drawn are not closed. Satisfaction of the learned judge with regard to mental cruelty is always subjective based on the perception of a reasonable ordinary man.

We are of the view that not only has the marriage between the parties broken down irretrievably the allegations of mental cruelty reached by the respondent to her husband were proved, by the above standards, which are special to this case. We clarify that the acts complained of as constituting mental cruelty may not have caused the same to another husband.

We tried to explore the possibility of reconciliation between the parties. We are absolutely certain that there is no possibility of reconciliation at all. It is a dead marriage. The relationship has come to an end forever.

In those circumstances, for the reasons given above we set aside the impugned judgement and decree and pass a decree for dissolution of marriage by divorce.

Now we have to decide the question of permanent alimony. The wife is at present residing on the first floor of premises no. 33, Tripura Roy Lane, Salkia, Howrah-6. It is an admitted fact that the husband is the owner of this flat and has allowed the wife to occupy it during this period of separation, by being in legal possession thereof.

The flat was by the husband on loan obtained from ICICI Bank. It is mortgaged in favour of the bank.

We are told that only a small amount of loan along with interest is outstanding.

The husband is willing to convey this first floor flat to the respondent, after redeeming the mortgage and retrieving the title deeds from the bank.

We direct the appellant to redeem the mortgage, obtain the title deeds of the flat and make an absolute conveyance of it in favour of the respondent by 31st August, 2019. The wife and the son born through the marriage Aditya will continue to reside in the flat by being in possession thereof.

The appellant will continue to pay Rs. 20,000/- (twenty thousand) per month to the respondent in terms of the existing interim order of this Court. This maintenance of Rs. 20,000/- (twenty thousand) per month will be increased at the rate of 5% every three years.

Neotia University which the son is attending will issue a letter to the respondent with a copy marked to the appellant and sent by EMS speed post indicating the fees, costs and charges of the University in respect of the said son Aditya Sadhukhan for the remaining semester/semesters in the third year and such fees, costs and charges payable to the institution for the final year that is the fourth year. The University shall send the communication to the appellant to his recorded advocate on record.

The appellant undertakes to this court through learned counsel to pay the above expenses or any other incidental expenses directly to the institution, in a timely manner so as not to hamper the education of Aditya. The son shall not change his course of study before completion of the University degree. In indicating the above charges, the University will take into account the scholarship, if any, being availed of by Aditya.

In addition to the above the appellant shall pay Rs. 5000/- to Aditya to meet his private tuition subject to production of receipt of payment. In case receipt is not available Aditya will ensure that his father has a talk with the private tutor with regard to the tuition fees payable.

The appeal (FAT 122 of 2015) and the connected on applications (CAN 2813 of 2015, CAN 9251 of 2016 and CAN 4505 of 2015) are disposed of by this judgement and decree.

Liberty to apply for implementation of this order. The department is directed to draw up the decree expeditiously.

(I. P. Mukerji,J.) (Md. Nizamuddin,J.)