

**HIGH COURT FORM NOL. (J)2**  
**HEADING OF JUDGEMENT IN ORIGINAL SUIT.**

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District: Goalpara.

**IN THE COURT OF DISTRICT JUDGE, GOALPARA.**

Present: **Shri T.K.Bhattacharjee,**  
District Judge, Goalpara.

**T.S. (D) Case No. 19/2011**

Dilip Kr. Medhi                      ..... Petitioner.

**-Versus-**

Kalyani Bala Hira                      ..... Respondent.

**Appearance:**

For the petitioner: Mr. Saiful Islam, advocate

For the respondent: Mr. Soleman Hassan, advocate.

Date of Evidence: 24.09.2013, 28.04.2015.

Date of Judgment: 28.06.2019

*And having stood for consideration to this day the court delivered the following Judgment:*

**-J U D G E M E N T-**

1. This is an application filed by petitioner Dilip Kumar Medhi u/s 13 of the Hindu Marriage Act 1955 with a prayer for dissolution of marriage by a decree of divorce.
  
2. The brief facts of the petitioner's case is that the petitioner married the respondent on 08.02.2001 at Goalpara Town according to Hindu rites and customs and thereafter, they started living together as husband and wife and subsequently, a male child was born to them but, thereafter, soon after the birth of the said child, the respondent left the house of the petitioner without any valid reason and she never came back but subsequently, she again became pregnant and gave birth to a female child which was not of the petitioner. The petitioner also stated in his plaint that his wife is a mentally imbalanced woman and she has no moral character and further, she was taken for treatment to the District Mental Health Programme at Civil Hospital, Goalpara on several occasions and later on the respondent terminated the marital ties with the petitioner by an affidavit and continued to desert the petitioner and as such this suit was filed with a prayer for a decree of divorce and other reliefs.
  
3. On receipt of the notices of this case, the respondent filed her written statement stating inter alia that this case is not maintainable; that the respondent lived with the petitioner till her second child (female) was in her womb for three months after which she was driven out by her husband after physical and mental torture. The respondent further stated in her written statement that the petitioner is paying maintenance @ Rs.3,000/- per month for herself and for the second child (female) that was born to them and she further stated that she is not a patient of any kind and also denied numerous averments made in the plaint and concluded the written statement with a prayer to dismiss the petition of the petitioner with cost.

4. Thereafter, this court was pleased to frame the following issues:
  - i. Whether there is any cause of action ?
  - ii. Whether the respondent without any valid ground or reason left the house of her husband about 3 years ago from the day of institution of the case and she fled away with money without knowledge of the petitioner and never come back ?
  - iii. Whether the respondent is a mentally ill person (woman) and she is a lady of easy virtue and does not believe in the sanctity of married life ?
  - iv. Whether the respondent was subject to cruelty and she was driven out of the house ?
  - v. What relief(s) the parties are entitled ?
5. Thereafter, this case proceeded for evidence during which both the sides adduced evidence and one witness from each side was examined and duly cross examined. Subsequently, the arguments of the respective learned counsels of both sides were heard in order to determine the matter at hand.

**DECISION, DISCUSSION AND REASONS:**

6. The P.W.-1 was the petitioner Dilip Kr. Medhi and from his examination-in-chief on affidavit it is found that according to him, the litigating parties were married on 08-02-2001 as per Hindu rites and customs in the house of the respondent at Geeta Nagar, Goalpara and a male son was born to them on 16-10-2002 but thereafter, after a few days the respondent left the residence of the petitioner along with the baby and never returned back. The P.W.-1 also stated in his examination-in-chief on affidavit that the conduct and character of his wife is very bad and she has lost her morality and terminated the marriage relation on 11-11-2005 by an affidavit. From the cross-examination of the P.W.-1 it is found that he is a resident of Goalpara town and that after the 2<sup>nd</sup> child was born the

respondent filed a case claiming maintenance from him and also a case u/s 498(A) of the IPC against him and that accordingly, he has been paying the maintenance to the respondent and the daughter. The P.W.-1 admitted during his cross-examination that he did not file any documents to show that the respondent was a person of bad character, that she was suffering from mental illness, that she had terminated the marriage by an affidavit etc.

7. The D.W.-1 was the O.P. respondent Kalyani Bala Hira, and from her examination-in-chief on affidavit it is found that according to her, she started conjugal life with her husband after the marriage with him on 08-02-2001 and 2 children were born to them out of their wed-lock and subsequently when she was 3 months pregnant her husband drove her out from his house keeping her 1<sup>st</sup> son with him and he never visited her for which she filed a maintenance case claiming maintenance for herself and her daughter and accordingly her husband has been paying maintenance to her. The DW-1 further stated that, she does not want separation or divorce from her husband and she wants to restore the conjugal life with her husband. Her cross-examination shows that, she denied numerous suggestions put to her during cross-examination but no questions were put to her with respect to her evidence to the effect that her husband drove her out from his house when she was 3 months pregnant in connection with her 2<sup>nd</sup> child.
  
8. Now, therefore, from the above discussion and with the reference to the issues that were framed in order to decide the dispute between the parties, it is found as follows:

**ISSUE NO. (i):**

9. As regards the Issue no. (i) which was framed with respect to the cause of the action of the suit, it is found that the plaintiff had filed this suit claiming a divorce but the defendant/ respondent disputed the grounds upon which the divorce was sought for and from the pleadings of the respective parties it is apparent that there is a dispute between the parties with respect to their marital life and as such there is cause of action for filing of the suit. Accordingly, this issue is decided in the affirmative.

**ISSUE NO. (ii):**

10. The issue no. (ii) was framed in order to determine "Whether the respondent without any valid grounds or reasons left the house of her husband about 3 years ago from the day of institution of the case and she fled away with money without knowledge of the petitioner and never come back" and from the materials available in the case record it is found that the plaintiff-petitioner had alleged in the plaint that the respondent fled away from his house with money without his knowledge and never came back but during his evidence he stated that she left his residence with their minor son and some money and he stated in his cross-examination that he did not file any case in this regard. The testimony of the P.W.-1 reveals that his evidence is not supported by any other witnesses and on the other hand, during cross-examination of the D.W.-1 no questions were put to her regarding the fact that the P.W.-1 had driven out the D.W.-1 from his house as stated by the DW-1. Moreover, the PW-1 admitted that he did not contact the respondent and never made any enquires about the respondent when she was in her father's house. Further, the P.W.-1 stated in his examination-chief-in-affidavit that the respondent fled away from his house with their son but his cross – examination shows that the son is residing with him. The P.W.-1 is also paying maintenance to his wife and his 2<sup>nd</sup> child, the daughter, which maintenance case was also upheld by the revisional court on being challenged. From the above facts and

circumstances it is apparent that the plaintiff petitioner was unable to establish the fact that the respondent left his house without any valid reason. This issue is accordingly decided in favour of the respondent and against the plaintiff.

**ISSUE NO. (iii):**

11. As regards the issue no. (iii) which was framed in order to determine “Whether the respondent is a mentally ill person (woman) and she is a lady of easy virtue and does not believe in the sanctity of married life” it is found that the petitioner did not mention anything in his examination-chief-on-affidavit about the mental condition or mental illness of the respondent and though he stated that the conduct and character of the respondent is very bad but, there was no supporting evidence to that effect and apparently the plaintiff petitioner has failed to establish the fact that the respondent is a mentally ill person and a lady of easy virtue by adducing cogent evidence. Accordingly, this issue is decided in the negative.

**ISSUE NO. (iv):**

12. As regards the issue no. (iv) which was framed in order to determine “Whether the respondent was subjected to cruelty and she was driven out of the house” it is found from the evidence on record that the plaintiff claimed that the respondent left his house without any valid reasons and on the other hand the respondent had stated in her written statement as well as in her examination-chief-on-affidavit that she was driven out by her husband from her matrimonial home which fact was not challenged or disputed during her cross-examination. Moreover, the fact of cruelty is required to be proved on the preponderance of probabilities and not beyond reasonable doubt and the accusations of being mentally imbalanced and of adulterous character by itself constitutes cruelty and therefore, taking into consideration all the facts and circumstances of this case I am of the

opinion that, the respondent was subjected to cruelty and that she was driven out of her matrimonial house. This issue is decided accordingly.

**ISSUE NO. (v):**

13. As regards the issue no. (v) which was framed in order to determine the relief to which the parties may be entitled to, it is found from the above that the plaintiff has failed to bring forth any grounds which would entitle him to the relief as prayed for and as such the plaintiff petitioner cannot be entitled to any relief in this case. This issue is decided accordingly.

**-Order-**

In view of the above, the suit of the plaintiff is dismissed. However no costs are imposed. Prepare the decree accordingly.

Given under my hand and the seal of this court on this the 28<sup>th</sup> day of June/2019.

**(T. K. Bhattacharjee)**  
District Judge,  
Goalpara.

Dictated & corrected by me:

District Judge,  
Goalpara.