

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**Civil Appeal No. 5696 of 2021
(@ SLP (C) No.11747 of 2017)**

SUBHRANSU SARKAR

.... Appellant(s)

Versus

INDRANI SARKAR (NEE DAS)

.... Respondent (s)

O R D E R

Leave granted.

1. The Appellant married the Respondent on 02.03.1997 and registered the same under the Special Marriage Act, 1954. Thereafter, the marriage was solemnized between the parties on 07.12.2000 under the Hindu rites and customs. Alleging cruelty and desertion by the Respondent, the appellant filed a suit for dissolution of marriage on 05.03.2007 before the District Judge, Alipore. The suit was dismissed, aggrieved by which the Appellant filed an appeal before the High Court of Calcutta. The Respondent did not appear before the High Court. However, the High Court dismissed the appeal filed by the appellant upholding the judgment of the Trial Court. The allegation made by the Appellant against the Respondent is that she was insisting on his residing separately from

his parents. Also, the Respondent misbehaved with her in-laws and that she was frequently leaving the matrimonial home. The appellant also alleged physical assault by the Respondent when both of them went to Puri and Shillong for holidays. The Respondent resisted the Petition filed for dissolution of marriage by denying the averments made against her. She accused the appellant of adultery and excessive consumption of alcohol. The Trial Court and the High Court refused to accept the contentions of the appellant that he is entitled for divorce by holding that he could not make out a case of cruelty meted out by the Respondent.

2. It was submitted by Mr. Nikhil Nayyar, learned Senior Counsel for the Appellant that the Appellant and Respondent have been living separately for more than 16 years and for all practical purposes the marriage is dead. He relied upon two judgments of this Court in ***Sukhendu Das v. Rita Mukherjee***¹ and ***Munish Kakkar v. Nidhi Kakkar***² in support of his submission that this Court in exercise of its power under Article 142 of the Constitution of India has dissolved marriages when they are totally unworkable and irretrievable.

3. We have requested Mr. Ranjan Mukherjee to assist this Court as Amicus Curiae on behalf of the Respondent as she did not engage an Advocate. Mr. Ranjan Mukherjee informed this Court that the

1 (2017) 9 SCC 632

2 (2020) 14 SCC 657

Respondent intends to continue to live with the Appellant. Mr. Mukherjee informed this Court that he spoke to the Respondent several times and the Respondent is not convinced that an unworkable marriage should be put to an end. In ***Sukhendu Das v. Rita Mukherjee*** (supra), this Court considered a similar situation where the marriage between the parties took place on 19.06.1992 and they were living apart from the year 2000. The Trial Court found that the husband could not prove cruelty by his wife and that he was not entitled for decree of divorce. The judgment of the Trial Court was upheld by the High Court and the same was the subject matter of challenge before this Court. The Respondent failed to appear before this Court in spite of notice being served. By holding that there was an irretrievable breakdown of marriage, this Court dissolved the marriage between the parties therein by observing that they had been living separately for more than 17 years and no useful purpose would be served by compelling them to live together in matrimony.

4. To do complete justice between the parties, this Court in ***Munish Kakkar v. Nidhi Kakkar*** (supra) put an end to the bitter matrimonial dispute which lingered on for two decades between the parties therein.

5. The Appellant is a police officer in the State of West Bengal and has made allegation of cruelty and desertion against the

Respondent. Though the respondent has insisted that she intends to live with the Appellant, no meaningful effort has been made by her for reconciliation. Allegations made by the Respondent relate to adultery by the Appellant which was the reason for her moving out of the matrimonial home. In spite of the best efforts made by Mr. Mukherjee, the Respondent has insisted that she is not willing for dissolution of the marriage. Mr. Mukherjee has brought to our notice that the Respondent has to take care of her son who is suffering from serious ailments.

6. Having scrutinized the material on record and considering the submissions made by Mr. Nikhil Nayyar and Mr. Ranjan Mukherjee, learned Amicus Curiae, without commenting on the merits of the matter, the marriage between the parties is emotionally dead and there is no point in persuading them to live together any more. Therefore, this is a fit case for exercise of jurisdiction under Article 142 of the Constitution of India. The marriage between the parties is dissolved. The Registry is directed to prepare a decree accordingly. Taking note of the submissions made by Mr. Ranjan Mukherjee, we direct the Appellant to pay an amount of Rs.25 Lakhs (Rupees Twenty-Five Lakhs) to the Respondent within a period of eight weeks from today. The petition filed by the Respondent under Section 125 Cr. PC for maintenance shall be withdrawn by the Respondent on receipt of the amount of

Rs.25 Lakhs. The payment of the aforesaid amount is in full and final settlement of all claims of the Respondent against the Appellant.

7. The appeal is disposed of accordingly.

.....J.
[L. NAGESWARA RAO]

.....J.
[B.R. GAVAI]

**New Delhi,
September 14, 2021.**