

Sujit Banerjee Vs. Anita Banerjee

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Court : Kolkata

Decided On : Mar-13-1996

Reported in : II(1997)DMC48

Judge : Shree Rang Misra and ;Siddheswar Narayan, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Section 13(1); ;[Special Marriage Act, 1954](#)

Appeal No. : F.A.T. No. 3883 of 1991

Appellant : Sujit Banerjee

Respondent : Anita Banerjee

Advocate for Def. : Samar Banerjee, Adv.

Advocate for Pet/Ap. : Amit Kumar Pan, Adv.

Disposition : Appeal dismissed

Judgement :

Siddheswar Narayan, J.

1. This appeal by the husband-appellant has been filed against the judgment and order dated 28.2.1990 passed by the 6th Court of Additional District Judge, Alipore, Calcutta in Matrimonial Suit No. 12 of 1986, whereby his prayer for a decree of divorce under Section 13(l)(ia) of the [Hindu Marriage Act, 1955](#) on the

ground of cruelty as also of desertion was refused.

2. The husband-appellant being the next door neighbour of the respondent fell in love with her and, accordingly, they were married according to Hindu rites and customs in the year, 1972 with the consent of parents of both the sides. After the marriage, the respondent shifted to her matrimonial home and some time later a son was born from the wedlock in the year 1973. The appellant happens to be an employee of a Theatre and the respondent is a housewife. The son, namely, Debabrata, who is now aged about 21 years, always lived with his mother i.e., the respondent.

3. The appellant has come up with a divorce petition mainly alleging cruelty both physical and mental caused to him by the respondent from the very beginning of the conjugal life. The respondent is alleged to have shown utter disregard, negligence and hatred to the parent of the petitioner and she used to visit her parental home very frequently against the wish and desire of the petitioner and her mother. She had been always ill-advised by her father leading to mental agony and insult to the petitioner. The respondent is said to be also in habit of abusing and even physically assaulting the petitioner from time to time and, on some such occasions, she had also torn the clothes on his body, she had also inflicted some bodily injuries on his person in some events of quarrel with him. She also tried to grab the ornaments of his mother for which his mother had to move for legal recourse through a Court of law. Ultimately, the respondent left the matrimonial home on July 22, 1980, when the petitioner tried his utmost to bring her back to the sense but he failed to do so. The matrimonial relationship came to a deadlock from that very date and the respondent, thereafter, refused to discharge her matrimonial obligations. The respondent also falsely accused moral character of the petitioner, and such false accusation told upon the mind of the petitioner to a great extent. The cause of action is thus said to have arisen on and from 22.7.1980, but the petitioner having awaited a change in the mode and style of her life ultimately, instituted the suit for dissolution of the marriage in the month of August, 1985.

4. The wife-respondent keenly contested the matrimonial suit and emphatically denied all the allegations levelled by the appellant. As per her version, it was the

appellant and his mother, who treated her ill at the matrimonial home. She had been subjected to forceful abortion of her second child in the womb. She never made any attempt to grab the ornaments of the petitioner's mother, rather, out of her reverence, she attended the Sradh ceremony of his mother. On 22.7.1980 she was beaten black and blue by the appellant with the active assistance of his mother and, thereupon, on the very same night she was driven out of her matrimonial home. The respondent, however, alleged that the petitioner maintained contact with about half a dozen young girls even bringing them to his home at night and he was also in habit of drinking alcoholic liquor. She asserted that inspite of such ill-treatment, she was willing to continue the conjugal life with the appellant and, accordingly, she objected to the dissolution of the marriage as prayed for.

5. The Trial Court framed two separate issues for the allegations of cruelty and desertion beside some other issues in the suit. The appellant's case on both the allegations failed before the Trial Court, according to which there was neither cruelty meted out to the appellant nor was there desertion made by the respondent. Being aggrieved by such findings of the Court below, the appellant has come up with the present appeal, but at the very outset, the Counsel for the appellant submitted that, in fact, there was no allegation of desertion made by the appellant even at the stage of trial and, accordingly, it was only the allegation of cruelty, which was the main thrust of the appellant's case to seek a decree of divorce.

6. After going through the counter-versions of the parties one's attention would most certainly be attracted to a crucial date i.e., July 22, 1980, when an incident definitely took place in their conjugal life. Of course, a decision like dissolution of marriage cannot be based on one or two incidents but, in the given facts of the instant case, this date assumes much importance. It is possible to read too much into this singly incident, which would speak for the past and future as well.

7. Though the husband appellant came up for a decree of divorce in the month of August, 1985, i.e. after a lapse of about five years of the aforesaid crucial date, he very emphatically pleaded in para 10 of his plaint that the cause of action for the

suit arose on and from 22.7.1980 and he also asserted from the dock before the Trial Court in clear terms that 'I never wanted that my wife should come back after 22.7.1980.' As to what has been alleged by the appellant with regard to this date i.e., 22.7.1980 would be found from paras 4 and 6 of his plaint. It was simply alleged that his mother was humiliated at the hands of the respondent and her parents and on that very date she left the matrimonial home for which he had to lodge a diary to the local Police Station. The appellant did not, however, disclose in the plaint as to what was the mode and manner in which his mother was humiliated by the respondent. It thus appears that the appellant had nothing to allege excepting deserting while drafting the plaint with regard to the incident of 22.7.1980.

8. As against the above plea of the appellant, it was contended inter alia by the respondent that on 22.7.1980 she was beaten black and blue by the petitioner with the active assistance of his mother and was driven out of the matrimonial home. A diary entry with the local Police Station was lodged from the side of the respondent as well.

9. When one looks to the evidence on the record, there was no evidence adduced to corroborate the version of the appellant, whereas, the respondent has examined her father and one doctor to corroborate her version. It would be derived from the corroborated evidence, adduced on behalf of the respondent that there was physical assault made on the person of the respondent on 22.7.1980 and the injuries, inflicted on her person, had been examined by a family physician of the respondent's father, namely, Dr. Radharam Dhole, D.W. 3 some contradiction of petty nature were of course pointed out in the oral evidence of the respondent (D.W.1) and her father (D.W.2), but those do not appear to be material and we have no manner of doubt that the findings of the Court below on the point need be interfered with. What would be more material in this regard is that there were certain clear admissions in the oral evidence of the appellant (P.W.1), which would rather substantiate the respondent's version about the occurrence dated 22.7.1980. The appellant admitted that while the respondent was quarrelling with his mother, he pushed her in order to stop the quarrel and further that the parents of the respondent came to his house on 22.7.1980 on hearing shouts. He further

admitted that there were altercations between the two families on that day and his mother sustained some injuries. Surprisingly, the appellant (P.W.I) while admitting the availability of some witnesses like his tenant, Dhiraj Dutt, and his elder brother, did not examine any of them.

10. One would be, therefore, left with no alternative than to accept the version of the respondent with regard to the ' incident dated 22.7.1980. This incident, which has been asserted in the plaint as the cause of action for the suit, would thus definitely indicate that, on this day, it was the respondent, who was beaten and was practically driven out of the matrimonial home. The appellant's version to the effect that on this day the respondent deserted the matrimonial home of her own accord was nothing beyond a falsehood.

11. In order to make out a case of cruelty the appellant also introduced some particular events by way of amendment in his plant. In nutshell, the allegations were that in the month of February, 1980 when the petitioner asked the respondent to share the same bed, the respondent not only refused to cohabit with him but also threw heavy article on his person but somehow or the other he could save himself otherwise he would have been killed. Again twice in the month of May, 1980, the respondent quarrelled with him hurling abuses and also assaulted him with rod and hot Khunti and also tore his cloth i.e. Panjabi. Again, in the month of January, 1980, when the appellant came back from his office to his home, the respondent abused him and suddenly kicked him on his back and also gave slap on his face as well as she tore his shirt. With regard to these allegations it is however significant to note that no corroborative evidence has been adduced on the record. There was also no effort made to adduce medical evidence to prove the injuries, said to have been inflicted by the respondent on more than one occasions. It would be derived from the oral evidence of the appellant that there were tenants in some portions of his residential house and Dhiraj Dutta, being one of the tenants, knew one or the, other incidents. Besides, the elder brother of the appellant also is said to be in know of the incidents. There is no explanation offered on the record as to why the appellant failed to examine any of such witnesses, who were available and who would have certainly thrown light over the matter. It is true that there may be some events happening in conjugal life inside a

closed room, but there was a case in which the events have been alleged to have taken place to the knowledge of some witnesses, at least, to the knowledge of the elder brother and a tenant of the appellant, whose evidence appears to have been purposely withheld. For this reason, it would be certainly difficult to accept the uncorroborated version of the appellant, who has come forward with such allegations before a Court of Law after a long lapse of about five years of such incidents.

12. Yet another act of cruelty as alleged in para 4 of the plaint was that the respondent took away the valuable ornaments and documents of his mother. It is, however, pertinent to notice in the self-same paragraph that there was a locker in Nationalised Bank for safety of the ornaments of the appellant's mother as also of the respondent and that though the locker stood in the name of the respondent, the custody of the key was with the appellant. That being as such, it does not stand to reasons that it would have been possible for the respondent to have taken away the ornaments of the appellant's mother. Be that as it may, the appellant admitted in his oral evidence that his mother had filed a case against the respondent some time after 22.7.1980 and that on 14.8.1980 his mother got injunction order from the Court restraining the respondent from operating the locker but the said order was later on vacated and the suit was dismissed. Such facts would hardly constitute an act of cruelty on the part of the respondent. At the best, this would indicate some strained relationship between the respondent and the appellant's mother with regard to custody of some ornaments but, in absence of any proof that actually some ornaments of the appellant's mother had been taken away by the respondent, I do not think, this could be a reason for any sort of mental cruelty to the appellant. In any view of the matter, the alleged incident simply indicated vindictive attitude of the appellant's family after once the respondent had been driven out of the matrimonial home on 22.7.1980.

13. There was yet another event referred to in the pleading of both the parties, which may be significant to read the mind and conduct of both the parties. The appellant's mother died on 6.9.1983 as told by the appellant. In this context, the appellant alleged in para 7 of his plaint that the respondent during the mourning period forcibly came to his house and abused the departed soul of her mother, for

which he lodged a diary at the Police Station, Chitpur, on 10.9.1983 and, thereupon, at the instance of the appellant, a petition under Section 144(2) of the Cr. P.C. was also filed. As against this, the respondent contended inter alia that after the death of her mother-in-law she wanted to participate in the Sradh ceremony, but she was forbidden, and so much so, that the appellant obtained an order in Case No. MP1658 of 1983 restraining her and her minor son entering into the appellant's house. However, when the Executive Magistrate was apprised of all the facts, he, after due enquiry, reversed his earlier order; and thereupon, the respondent was permitted to attend the Sradh ceremony and to perform religious rites connected with the departed soul of her mother-in-law. The story as narrated by the respondent, has been practically admitted in the oral evidence of the appellant wherein he submitted that the order of the learned Magistrate restraining her from attending the Sradh ceremony was vacated and he performed Sradh ceremony to his satisfaction in the presence of his wife i.e., the respondent. It would also transpire from his evidence that after the above legal recourse, the respondent lived in her matrimonial home right from January 15, 1984 to April, 1985 i.e. for about 1 year and 4 months, when she again left her matrimonial home. What would this incident indicate Most certainly that inspite of the forceful restraint put by the appellant, the respondent, with her earnest sincerity managed to attend the Sradh ceremony of her mother-in-law and lived in the matrimonial house against the wishes of the appellant and also inspite of the fact that she had been earlier driven out of the house in the year 1980. This is one aspect which would also establish bona fide on the part of the respondent to live together with her husband in the matrimonial home.

14. In a conjugal life, some wear and tear is bound to occur but the same may not be material unless it can be termed as a cruelty, making a negative expectation of the couple living together impossible. A trivial aspect of such wear and tear cannot be made a prestige issue to make out a case of cruelty. In the instant case, what would be gathered from the tenor of the whole plaint is that the appellant was given to an understanding, rightly or wrongly, that the parents of the respondent, residing just opposite to his house, always interfered into his conjugal and domestic life and the respondent had been always ill-advised of the father. In this context, the appellant further pointed out that only after a year or two of the

marriage his father died in the year 1974 owing to humiliation expressed by the respondent. The appellant further asserted in his plaint as also from the dock that the root cause of his disturbed conjugal life was the frequent visit of the respondent to her parental house against the wishes of his mother as also his desire. The father of the respondent and also the parents of the appellant have since died and, now, the chapter of any grievance of their score is closed. And, the question is why the wife should be revenged for the fault of her father. Moreover, there was not even an iota of evidence on the record that the death of the father and the mother of the appellant had to do anything with the conduct of the respondent. There may be a circumstance, which be beyond control of a human being. Since the paternal house of the respondent situated just in front of her matrimonial home across the road, it was out of natural on her part to visit the paternal house as and when possible. It does not understand to reasons as to why in the present setup of the society, a husband or his mother should object to it. No question of any bondage arises in a relationship like this. This becomes all the more not conceivable in view of the fact that the marriage in itself was a fallout of this situation like the two families living close to each other leading to a sort of love between the couple, which, ultimately, resulted in a traditional marriage. In any view of the matter, even accepting that the respondent visited her parental house, this could never be taken as an act of cruelty. A wrong notion in one's mind can't be permitted in law to constitute an imaginary act of cruelty.

15. When there is commotion in the conjugal life, there may be some differences in opinion as well between the two with regard to decisions in day- to-day life. And, accordingly, there were such two points which have been referred to in the instant litigation, one with regard to the education of the son and the other as to his Annaprasan ceremony. A few months prior to the institution of the suit i.e. some time in the month of March, 1985 the appellant got his son admitted in some good school, namely Victoriya Boys' School at Kurseong, West Bengal. Some time later on, at the instance of the mother he was brought back to Calcutta in the month of November, 1985 so as to continue his studies in a School at Calcutta, where the parties lived. This was against the wishes of the appellant, who is also aggrieved to have noticed that the name of the father of the wife-respondent had been mentioned on the guardian of the boy of the Transfer Certificate of the School. It

goes without saying that since the son was living in custody of the mother, it was her convenience which was material to take a decision in the matter. This, however, cannot be made an issue and taken as an act of cruelty. Such event is but natural to happen after once the parents had already entered into litigation. An explanation has of course been offered by the wife-respondent that her husband did not take any care of the welfare of the son, as regards his education and other matters. We need not go into those details. In our opinion, this has nothing to contribute towards a cause for dissolution of marriage.

16. Though not on the strength of the pleadings in the plaint, the Counsel for the appellant urged in his argument referring to the statements of the appellant in his cross-examination that the Annaprasan ceremony of his son was held in his maternal uncle's house and not at his house. This fact appears to have been taken as a prestige issue of the appellant's family. The appellant has, however, admitted that his family members had been invited to attend the ceremony but none of his family members attended the ceremony nor any present was sent on his behalf. The appellant also did not spend any money over the ceremony. He has also admitted that after the ceremony his son came to his house. There appears nothing unusual in it. This, in any view of the matter, cannot however constitute an act of cruelty. If any fault is to be found out of it, there was nothing beyond neglect to participate in the ceremony from the side of the appellant.

17. Next, we may advert to the contention of the parties as to the character assassination of the appellant, which has been urged to have constituted an act of cruelty on the part of the respondent. In the instant case, what happened is that the wife-respondent in the concluding portion of her written statement wanted to submit that she would resist the decree of divorce even condoning the acts of cruelty and shortcomings on the part of the appellant as a devoted Hindu wife. In this context, she narrated in para 12 of her written statement that the appellant had contact with about half a dozen young girls, not related to him, and he had started bringing them home at night and also that he was in habit of drinking alcoholic liquor. She also submitted that she could tolerate the beatings but she would not agree to share her husband with outsider girl, one of whom had offered to marry him (the appellant). This allegation was certainly levelled against the moral

character of the appellant. Taking advantage of such submissions made in the written statement, the appellant immediately thereafter amended his plaint so as to introduce an additional ground of cruelty and pleaded that the respondent falsely accused his moral character and such false accusation told upon his mind to a great extent.

18. A survey of the judicial pronouncement, made from time to time, has since established a proposition of law that accusation of moral character by a spouse made against the other without any basis of foundation would most certainly constitute an act of mental cruelty against the other spouse accused as such. The legal proposition as such has been propounded in several authorities such as (i) 1989 CWN 904, Nemai Kr. Ghosh v. Smt. Mita Ghosh, (ii) : (1989)1CALLT104(HC) , Harendra Nath Burman v. Suprava Burman, (iii) 0044/1990 : AIR1990 Cal367 Santha Banerjee v. Sachindra Banerjee, (iv) 1993 (1) All India Hindu Law Reporter 606=I (1993) DMC 565 (Cal.), Amarendranath Sanyal v. Krishna Sanyal, (v) 1995 WBLR (Cal) 282, Sova Ghosh v. Asit Kr. Ghosh and (vi) : AIR 1996 AP19 , Jaikrishna Panigarhi v. Smt. Surekha Panigarhi). 19. It was, however, noticeable that the main thrust of this legal proposition was definitely on the point that such accusation against moral character would constitute cruelty only when those were baseless and unfounded meaning thereby, that if such allegations were not unfounded and if those could be entertained by a spouse of ordinary prudence in some given facts and circumstances of an individual case, that would not be taken to be an act of cruelty. We would, therefore, proceed to examine as to whether the accusations made by the respondent were unfounded and baseless.

20. Be it recorded that there were certain facts available on the record either expressly admitted in the oral evidence of the appellant himself or established through the circumstances, which would be relevant on the above point for determination. First, the appellant himself admitted that he had intimacy with some women, who were his colleagues and their names were Papiya Sengupta, Chandra Dutta, Metali Battacharya. Learned Counsel for the appellant urged in this regard that the appellant was working in same theatre wherein some women were also working and, that being such, he had intimacy in usual course with

those colleagues as named above. Contending inter alia, learned Counsel for the respondent has drawn our attention to the dictionary meaning of the word 'intimacy', being 'illicit sexual relationship' and has accordingly urged to record an admission of the appellant on that line. We would, however, abstain from going with the literal meaning of the word intimacy. Even going by its meaning in common parlance, we are of the view that by the above expression of the appellant one would surely be left with an impression that he had developed some sort of very close relationship and attachment with those women, which were not expected in an ordinary course simply as a colleague. There was also no specific denial of the allegation made in the written statement that some women used to visit his house in the night. The respondent asserted in her statement on oath that she had seen many indicating bad character of the appellant and that he used to mix freely with the women. Furthermore, the appellant also admitted in his oral evidence that he used to take drinks like Scotch- Whisky occasionally. It has of course been not elicited as to what was the frequency of such occasional drinks. Such clear admissions in the oral evidence of the appellant, considered in the backdrop of the hard fact that some sorts of commotions and tensions had become the way of their conjugal life and further that the appellant was adamant not to allow the respondent to live in the matrimonial home going to the extent so that she was driven out of the said house on 22.7.1980 i.e. about 5 years prior to the suit and the appellant categorically answered to the Court question that he was not willing that his wife should come back to the matrimonial home after 22.7.1980, would certainly go to a great extent to have some such foundations in the mind of a spouse of ordinary prudence that his neglecting conjugal partner had immoral attachment with the visiting women, be his colleagues or otherwise, in uttered betrayal to her marital obligation towards his wife. If a husband, admitting his company with wine and woman both, also becomes scare to his wife, what else would be left in the mind of the said if than to call him immoral. In a circumstance like the present one and under the given admitted facts we, in our considered opinion, would lean more towards a decision in favour of the respondent that her accusation against the moral character of the husband-appellant was not baseless or unfounded. That being such, even the cause of cruelty made out after the institution of the matrimonial suit was of no help or any recourse to the appellant in

proving a decree of divorce. A legal proposition has thus been rightly suggested in para 13 of the written statement of the respondent that the provision of the Hindu Marriage Act should be invoked as a relief in genuine hardship of a spouse and not to be used as a weapon for indulgence in debauchery. This is, however, not to hold the appellant outright guilty as such.

21. We would now switch over to appreciate the case of the parties with that angle of approach as urged on behalf of the appellant that the marriage between the parties has since broken down irretrievably and irreparably with the result that there was no chance of their living together again; and therefore, there was no alternative left for a Court of Law than to grant a decree of divorce. In this regard, the authority, which has been very much relied upon by the Counsel for the appellant, was the case of *V. Bhagat v. Mrs. D. Bhagat*, reported in : AIR 1994 SC710 . This was, however, a case in which the Apex Court had to take a decision in some extraordinary situation cutting across the procedural objections to give a *quietus* to the matter. The Apex Court did take a decision to dissolve the marriage because of that having broken down irretrievably. This, in our considered opinion, cannot, however, be adopted as a matter of course in all the cases. Besides, it has to be borne in mind that the decisions as taken above by the Apex Court could be made in exercise of the powers conferred under Article 142 of the Constitution of India which is of course not available to this Court or any subordinate Court. Even in the above authority, the principle laid down does not give absolute power to grant a decree of divorce merely on the ground of the marriage having broken irretrievably. It would be apposite to extract para 23 of the said authority, which is as follows :

'Merely because there are allegations and counter-allegations, a decree of divorce can't follow. Nor is mere delay in dismissal of the divorce proceedings by itself a ground. There must be really some extraordinary features to warrant grant of divorce on the basis of pleadings (and other admitted material) without a full trial. Irretrievably broken down of the marriage is now a ground by itself. But while scrutinising the evidence on record to determine whether the grant(s) alleged is made out and in determining the relief to be granted the said circumstances can certainly be borne in mind. Such usual step can be resorted to only to clear up an

insoluble mess, when the Court finds it in the interest of both the parties.'

22. While dealing with the instant case within the purview of the [Hindu Marriage Act, 1955](#), we would certainly abstain ourselves going beyond the limit circumscribed by Section 13 of the said Act for granting a decree for divorce. We would, rather, endorse the view as already taken by a Division Bench of this Court in the case of Depali Das v. Gora Chand Das, reported in 1987 CWN 648. The view taken therein is that the provisions of [Hindu Marriage Act, 1955](#) have not been made as such that if it is found that the marriage is irretrievably broken, the decree of divorce can be granted. Yet another decision of this Court on the point, which may be referred to is the case of Harendra Nath Burman v. Sm. Suprova Burman & Anr., reported in 1993 CWN 102, wherein it has been held that there should be something more beyond the situation of the marriage having irretrievably broken when a Court can take recourse of dissolution of marriage in the interest of both the parties.

23. It would be apt to observe in this context that the legislative intention, be it either in [Hindu Marriage Act, 1955](#) or the [Special Marriage Act, 1954](#), was not in favour of granting a decree of divorce simply because the marriage had broken down irretrievably and, therefore, it was not included in the list of statutory grounds for a decree of divorce. There was a risk always involved in giving recognition to an unilateral act of one spouse, reducing the relationship to a situation where the marriage would be deemed to have broken down. An unilateral act unless made an issue by the wronged spouse cannot be deemed to be a valid ground to take away the legal right which was accused by the solemnization of marriage. The concept of marriage as conceived in the Hindu rites and customs is very pious and either of the party in the tie has no absolute right to break it on some whims. It was only the spouse against whom some wrong was done constituting a statutory ground in the Act, who will have the right to move for the dissolution of the marriage. Even if a spouse suffering some wrong at the hands of the other spouse chooses not to opt for dissolution of marriage, the law may not permit to dissolve the marriage at the instance of the spouse who is found guilty of any wrong. So, in the instant case, if the wife opts not to dissolve the marriage inspite of any suffering at the hands of the husband appellant and there is bona fide on her part,

the husband-appellant cannot be given any advantage of the situation.

24. On the factual score, the moot question is whether in the instant case the marriage would be deemed to have broken down irretrievably. Probably this is not. This is because even the husband appellant did not choose to seek a decree of divorce after the crucial date of cause of action being 22.7.1980, when the difference between the parties became acute. He rather waited for a long period of five years before moving a petition for divorce. Furthermore, even during the long gap of five years, there was a sincere effort made by the wife-respondent to return to the matrimonial home and, admittedly, she lived there from January, 1984 to April, 1985. The period, consumed during the long pendency of the instant litigation for about 10 years, cannot, by itself, be made a ground that the marriage has broken irretrievably. It would not be out of place to mention here that this Bench, before entering into the merits of the case, took recourse of reconciliation and interrogated the couple as also their son, Debabrata, who is now aged about 21 years. Though the husband was still adamant for a decree of divorce, the wife urged for a mercy not to break the marriage for the sake of her sentiment as a Hindu wife and also to preserve the marital tie at least to give good name and social status to the son. The son also wanted his parents to live together with him but, of course, if he was left to a question of choice, he would favour the mother with sympathy for the father.

25. We would, therefore, not concur with the submissions of the Counsel for the appellant that the marriage had broken down irretrievably and irreparably; and this aspect of the case had, therefore, nothing to assist or to come to an aid of contention of the appellant.

26. Thus, for all the reasons aforesaid, we would confirm the findings of the Trial Court.

27. Before we part with this appeal, it may be mentioned that the Trial Court, by its order dated 10.4.1986 under Section 24 of the [Hindu Marriage Act, 1955](#), had directed payment of Rs. 450/- per month as maintenance pendente lite to the wife-respondent and, further, by its order dated 21.4.1988 under Section 26 of the said Act, payment of Rs. 400/- per month to her for maintenance and education of the

son (as long he is minor). In this context, keeping regard to the particular facts and circumstances of the case, we, though conscious of having refused a decree of divorce, deem it necessary to direct that the wife-respondent would be entitled to permanent maintenance at the rate of Rs. 1,000/- per month as provided under Section 25 of the [Hindu Marriage Act, 1955](#) from this day subject to modification in future by the Trial Court as and when required on the prayer of the either party.

28. In the premises, this appeal has no merit and, accordingly, it is dismissed. The costs in the appeal, payable to the wife-respondent are assessed at Rs. 5,000/- (Rupees five thousand only).

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