



Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
06.	20.8.07	<p>Present: Miss (Dr.) Doma T. Bhutia, Advocate for the Appellant.</p> <p>Mr. K.B. Chettri, Advocate for the Respondent.</p> <p>...</p> <p>This is an appeal from the Judgment and Order dated 24.11.2006 passed in the Court of Mrs. Meenakshi M. Rai, Judge, Family Court, Sikkim at Gangtok.</p> <p>The petition was filed by the wife Mrs. Anita Pradhan. The main allegation was cruelty. It was submitted that the respondent-husband namely Udai Pradhan used to drink regularly and assault the petitioner.</p> <p>On the part of the respondent it has been alleged that although he might have slapped the petitioner once or twice yet it was not any regular matter and that although he used to drink, it has become absolutely moderate after he became Christian in 1999.</p> <p>The petitioner still continues to be a Hindu.</p> <p>The parties have been living apart for quite some time and the petitioner lives in a rented</p>	

✓



Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
		<p>house. They have two children. The son who is reading in class VII at present resides with Udai's sister and is looked after by the respondent. The daughter who studies in class VIII lives with her mother.</p> <p>The respondent used to pay maintenance of Rs.2,000/- to the petitioner during the pendency of the proceedings. There is an order of maintenance passed on 08.09.2006, by the same Family Court, wherein maintenance allowance of Rs.1,500/- was allowed, i.e., it was reduced by Rs.500/- from the amount which was being paid earlier when parties had gone to the marriage counsellor.</p> <p>It appears that the said counsellor has found the parties to be incompatible and the marriage on the rocks. In paragraph 14 of the judgment under appeal, the Family Court has recorded as follows: -</p> <p>"14. In the instant case from the evidence as borne out from the records, it is seen that there are allegations and counter allegations. Both parties accuse each other of being drunk and it appears that the petitioner used to leave home without the consent of the respondent. It also appears that there is no substantial ground for the</p>	

✓

Serial
No. of
OrderDate
of
Order

Order with Signature

Office Note as to
action (if any)
taken on Order

petitioner not to live with the respondent and the facts as borne out by the records do not indicate that there was any cruelty meted out to the petitioner, which is more than the ordinary wear and tear of married life. It may be recorded here that the demeanour of the petitioner during the entire proceedings have been of defiance and intolerance."

The respondent has alleged that the petitioner is of loose character and has said that she used to leave home for days on end, sometimes for 11 days sometimes for 15 days.

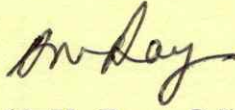
Any imputation of adultery ^{*(if the word might be used in this context!)*} fair and clear, using clear and unequivocal language, has not been made.

It appears that the petitioner did leave the matrimonial home on her own sporadically even before they had started living separately finally.

The petition has not been pressed on the ground of conversion of the respondent's religion. It is not a consent petition for divorce either. On the ground which is taken by the petitioner, i.e. cruelty, it is very difficult to find in the appellate Court that the husband acted in such manner, and is likely to act again in such manner that it would be cruel for the Court to compel the

at



Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
		<p>petitioner to stay with the respondent any more as his wedded wife.</p> <p>If the main divorce petition does not succeed it is not possible for the maintenance petition to succeed on its own in a vacuum; as such, the appeal is dismissed and the judgment of the Family Court is upheld. There will be no order as to costs.</p> <p style="text-align: right;">  (A.N. Ray, CJ) </p>	<p><i>Trust Court records forwarded on 1-9-07</i> <i>11/2/07</i></p>