

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

F.A. No.06 of 2022

Sri Tapan Chandra Deb, aged 63 years, son of late Nabin Chandra Deb, resident of Ghilatali Bazar, Bhakta Das Para, P.O. Ghilatali Bazar, Kalyanpur, District- Khowai Tripura.

.....Appellant(s)

V E R S U S

Smti. Anita Deb alias Aruna, wife of Sri Tapan Chandra Deb, daughter of late Rasaraj Deb, resident of West Joynagar, Dashamighat, P.O. Agartala, P.S. West Agartala, District- West Tripura.

.....Respondent(s)

For Appellant(s) : Mr. P.K. Dhar, Sr. Advocate,
Ms. Papiya Goswami, Advocate,
Mr. Rahul Debnath, Advocate.

For Respondent(s) : Mr. P. Roy Barman, Sr. Advocate,
Ms. A. Debbarma, Advocate.

HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH

Date of hearing & judgment : 11th January, 2023.

JUDGMENT & ORDER(ORAL)

Heard M. P.K. Dhar, learned senior counsel assisted by Ms. Papiya Goswami and Mr. Rahul Debnath, learned counsel appearing for the appellant-husband and also heard Mr. P. Roy Barman, learned senior counsel assisted by Ms. A. Debbarma, learned counsel appearing for the respondent-wife.

[2] The present appeal has been filed by the appellant-husband under Section 19 of the Family Courts Act, 1984 to challenge the impugned

judgment dated 19.04.2022 passed by the learned Additional Judge, Family Court, Agartala, West Tripura in Title Suit (Divorce) No.302 of 2021 wherein the learned Judge, Family Court dismissed the application filed by the appellant to obtain a decree of divorce on the ground of cruelty and desertion.

[3] The facts of the case, in brief, are that the marriage of the petitioner was solemnized with the respondent in the month of February, 1980 as per Hindu rites and Customs in the house of the respondent's father at Joynagar, Agartala. After marriage the petitioner stated to have started their conjugal life together and lived as husband and wife peacefully in his house for few months and the respondent also gave birth to a daughter, who is already married. The petitioner stated that after few months of their marriage, the respondent started quarreling with him on several occasions and even assaulted him without any cogent reasons. It was alleged that the respondent did not obey any request of the petitioner and used to abuse him in slang languages. It was also alleged that the respondent neglected the petitioner in aspects of their conjugal life and even deprived from having sexual relationship with her after delivery of their daughter. It was stated that since 1980, the respondent had started to live at her father's house at West Joynagar, Agartala. The petitioner stated that he had taken several attempts to take the respondent back to him to Ghilatali but she did not pay

any heed and thus, he could not settle their dispute amicably. It was further stated that the respondent gave her opinion that he may remarry since she was unwilling to resume her conjugal life with him.

[4] The appellant initially filed a title suit being numbered as T.S(Divorce) 302 of 2021 before the Additional Judge, Family Court, Agartala, West Tripura and sought for a decree of divorce by way of dissolution of marriage against his wife. To substantiate his claims and contentions, the petitioner examined himself as P.W.1 and one of his neighbours namely Ajit Shil as P.W.2. Despite several efforts, notice could not be served upon the respondent-wife and the case was proceeded *ex parte* against the respondent and no formal issues were framed. However, the learned Family Judge for the purpose of discussion and determination, had taken up the following points for consideration :

- (i) Whether both the parties to this case are legally married to each other?
- (ii) Whether the respondent treated the petitioner with cruelty at various point of their conjugal life?
- (iii) Whether the respondent has deserted the petitioner since June, 1980 without any cogent reason and has been staying away from him?
- (iv) Whether the petitioner-husband is entitled to get a decree of divorce on the grounds, as prayed for ?

[5] The learned Judge, Family Court, Agartala after considering the pleadings and documents on record found that the petitioner was at fault as he forwarded a concocted story against the respondent for ulterior

benefit. Both the points were decided against the petitioner and the learned Judge further observed that the petitioner was not entitled to any relief as claimed by him in the present case and rejected the application filed by the petitioner. The operative portion of the order reads as follows :

“In the result, it is here ordered that the application filed by the petitioner, Sri Tapan Chandra Deb against the respondent, Smt. Anita Deb @ Aruna for a decree of divorce on the ground of cruelty and desertion U/S-13(1) (i-a)/(i-b) of the Hindu Marriage Act is hereby rejected. The petitioner is found not entitled to get any other relief, if claimed. Prepare the decree accordingly in terms of the above findings. With the above findings and observation, the instant case is hereby dismissed and disposed of without contest.”

[6] Being aggrieved by the order of the learned Judge, the petitioner filed the present appeal to obtain a decree of divorce under Section 13(1) (i-a)/(i-b) of the Hindu Marriage Act.

[7] Mr. P.K. Dhar, learned senior counsel for the appellant submits that the learned trial Judge without appreciating the pleadings and evidence on record passed *ex parte* judgment which is perverse and erroneous. Accordingly, he proposed to remand the matter back to the trial Court for deciding the matter afresh by setting aside the impugned judgment dated 19.04.2022 passed by the learned Additional Judge, Family Court, Agartala in Title Suit (Divorce) No.302 of 2021. Mr. P. Roy Barman, learned senior counsel appearing for the respondent has fairly supported the proposal given by the learned senior counsel for the appellant.

[8] After hearing the learned counsel for both parties and also considering the proposal advanced, we are of the opinion that the learned Judge, Family Court has not appreciated the facts of the case and could have more vigilant while passing the order, more so when the matter pertains to senior citizens who are at fag end of their life and are facing *lis* against each other for divorce. This Court feels that better wisdom would prevail in between them. Accordingly, the appeal is allowed and the judgment dated 19.04.2022 passed by the learned Additional Judge, Family Court, Agartala in Title Suit (Divorce) No.302 of 2021 is set aside and the same is remanded back to the court below for deciding the matter afresh. The court below may decide the matter in its entirety.

[9] The appeal is allowed and disposed of with the aforesaid terms.

Send down the lower court records forthwith.

Pending application(s), if any, also stands disposed of.

(ARINDAM LODH), J

CHIEF JUSTICE (ACTING)

Pulak/Dipesh