

**HIGH COURT OF TRIPURA
AGARTALA**

MAT.APP. No.13/2021

Sri Diganta Barman, Son of Sri Gobinda Barman, Permanent resident of Subharsana Apartment, Flat No.203, 6 Mile, Juripar Bus Stand, opposite to Panchayat and Rural Development Commissioner's Office, P.O. Juripar, P.S.-Dispur, Agartala, District-Assam, PIN-781005.

Currently residing at Agartala ITI Road, P.O.-Indranagar, P.S.-West Agartala, District-West Tripura, Tripura-799006.

-----Appellant(s)

Versus

Smt. Triveni Gogoi, Wife of Sri Diganta Barman, Daughter of Lt. Abani Gogoi, Resident of C-35, Bankuchi, Lavica Garden Hamlet, Banganakamrup Metro, P.O., P.S.-Kamrup (M), Assam, PIN-781015.

-----Respondent(s)

For Appellant(s) : Ms. R. Guha, Advocate,
Mr. S. Bhowmik, Advocate.

For Respondent(s) : None.

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

Date of hearing and judgment : **11th January, 2023.**

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

Heard Ms. R. Guha, learned counsel appearing for the appellant-husband. None appears for the respondent-Wife.

2. This matrimonial appeal under Section 31 of the Special Marriage Act, 1954 read with Section 19 of the Family Courts Act is directed against the judgment along with decree dated 23.07.2021 passed by the learned Additional Judge, Family Court, Agartala, West Tripura in case No. T.S.(Divorce) 542 of 2019 whereby the learned Judge dismissed the petition filed by the husband-petitioner seeking decree of divorce after dissolution of marriage.

3. In the present appeal, appellant-husband has prayed for the following reliefs:

"I. Admit the instant Appeal filed by the Appellant against the impugned Judgment and Order, dated 23.07.2021, passed by Ld. Additional Judge, Family Court, Agartala, West Tripura, in Title Suit (Divorce) 542 of 2019.

II. Issue notice upon the Opposite Party.

III. To set aside the impugned Judgment and Order, dated 23.07.2021, passed by Ld. Additional Judge, Family Court, Agartala, West Tripura, in Title Suit (Divorce) 542 of 2019 along with its decree, dated, 23.07.2021, and pass the Order for desolating the marriage between the Parties.

IV. Call for the entire records of Title Suit (Divorce) 542 of 2019, from the Court of Ld. Additional Judge, Family Court, Agartala, West Tripura.

AND

V. To pass any other Order or Orders, Direction or Directions in the favour of consignable Justice."

4. Case of the appellant-husband, in a nutshell, is that out of love affairs marriage of the petitioner Sri Diganta Barman was solemnized with the respondent Smt. Triveni Gogoi on 17.01.2007 before the Registrar/ Marriage Officer, Golaghat, Assam under Special Marriage Act. Thereafter, on 19.01.2007 both of them got married socially at Bokakhat, Golaghat, Assam. Out of their wedlock, the wife gave birth to a female child on 23.09.2008. It is alleged that after their marriage, the petitioner was posted at various places all over the country but the wife always intended to reside at her maternal father's house which deprived the petitioner from love and affection of his daughter as well as from legal conjugal life. It is also alleged that the wife is addicted to alcohol which was supported by her maternal family. Petitioner also took huge loan to purchase a bigger house and in the year 2013 he got a Government job in Tea Board India as Assistant Director and posted at Aizwal where during Christmas in 2014 his wife severely abused him before his colleagues and friends.

5. Petitioner also alleged that he has all along tried to perform his marital obligations and stay with his family but the respondent-wife is unwilling to return back to him, more so, she always tried to harass him and damage his reputation which amounts to mental cruelty. As such, he filed a petition under Section 27(1)(b), (d) and (e) of Special Marriage Act, 1954

before the learned Addl. Judge, Family Court, Agartala for getting a decree of divorce. Since the respondent-wife remained absent before the Court despite of being properly served, the matter was heard *ex parte* against her and learned Judge after appreciating evidence available on record dismissed the petition filed by the husband-petitioner seeking decree of divorce after dissolution of marriage. Aggrieved thereby, the petitioner filed the instant appeal. Hence, this case.

In this appeal also, despite several efforts, notice could not be served upon the respondent-wife. Thereafter, substituted process of service through paper publication was also adopted, but till date to no good and resultantly, respondent has not turned up in this case.

6. Ms. R. Guha, learned counsel appearing for the appellant-husband, contends that the wife is still residing in the house of the appellant in Assam along with their daughter, her mother and other family members and apart from the maintenance given to his wife, all other expenses including the school fees and other educational charges of his daughter are also being borne by the appellant. She also contends that the appellant is continuing to pay the maintenance allowance to his wife and also for their child but the wife was all along reluctant to live with her husband who is now posted at Agartala. She further contends that the learned Trial Judge

without appreciating the evidence on record committed an error in dismissing the petition filed by the husband-petitioner seeking decree of divorce after dissolution of marriage and prays for setting aside the impugned judgment along with decree dated 23.07.2021 passed by the learned Additional Judge, Family Court, Agartala, West Tripura in case No. T.S.(Divorce) 542 of 2019.

7. Having heard the submission of learned counsel for the appellant, this Court is of the considered view that the appellant being a husband has all along performed his obligatory duty by providing maintenance to his wife and daughter including expenses incurred on her education but the wife restrained herself from continuing peaceful marital life with her husband. The learned Judge has failed to appreciate the documentary evidence produced by the appellant-husband and committed an error while dismissing his petition seeking decree of divorce.

8. In view of above discussion, we are of the considered view that decree of divorce should be granted in favour of the appellant and accordingly, we do so. The marriage between the appellant-husband and the respondent-wife is dissolved. Consequently, the impugned judgment and decree dated 23.07.2021 passed by the learned Additional Judge, Family

Court, Agartala, West Tripura in case No. T.S.(Divorce) 542 of 2019 is hereby set aside.

9. The appellant-husband shall continue to pay the maintenance allowance of Rs.14,000/- to the child and also Rs.12,000/- to the respondent-wife with an annual increase of 10% and further the appellant-petitioner shall also take care of the education and other wellbeing as well as requirements of the child.

Registry to prepare the decree of divorce accordingly.

10. With the above observations and directions, the appeal stands allowed and disposed of.

Send down the lower court records forthwith.

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

(ARINDAM LODH), J

CHIEF JUSTICE (ACTING)

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