

GAHC010031782023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/45/2023

BIDYUT BIKASH BORGOHAIN
S/O- KULEN CHANDRA BORGOHAIN,
R/O- SUNDARPUR, EAST MILAN NAGAR ,
P.O- C.R BUILDING,
P.S AND DIST- DIBRUGARH, ASSAM

VERSUS

SILPI SIKHA DOWERAH
W/O- BIDYUT BIKASH BORGOHAIN,
D/O- ANIL DOWERAH,
R/O- AMULAPATTY, DIBRUGARH
P.S AND DIST- DIBRUGARH, ASSAM

Advocate for the Petitioner : MR. P J SAIKIA, SR. ADV

Advocate for the Respondent : MD A SAHAD

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

21-07-2023

Heard Shri A. K. Gupta, learned counsel for the petitioner. Also heard Shri A. Sahad, learned counsel for the sole respondent.

- 2.** The instant petition has been filed under Article 227 of the Constitution of India against an order dated 15.12.2022 passed by the learned Addl. District Judge (FTC), Dibrugarh in TS No. (D) No.119/2019 rejecting the Petition No. 1436/2022.
- 3.** The aforesaid petition was filed by the petitioner who is also the plaintiff by which a prayer was made that the PW 4 may be crossed examined through video conferencing.
- 4.** It is the case of the petitioner that the petitioner as plaintiff has filed a suit for divorce which has been contested by the respondent wife. In the said proceedings, evidence-in-chief has been filed by way of an affidavit including the evidence of the PW4. At the time of cross-examination, the aforesaid petition was presented to allow the cross-examination of the PW 4 via video conferencing and the ground cited were that the PW 4 is a working woman at Guwahati and has a son of 8 years and it would be difficult for her to present herself for cross-examination at Dibrugarh.
- 5.** The learned Court vide the impugned order dated 15.12.2022 had however rejected the said petition by observing that the adultery being a principal ground for seeking divorce and the PW 4 being the main witness to support the case of the plaintiff, her cross-examination by video conferencing may not be appropriate.
- 6.** Shri Gupta, the learned counsel for the petitioner has submitted that the reason cited may not be good reason as the principal issue raised in the petitioner was not considered at all. He submits that there is no discussion on the difficulties expressed namely that the PW 4 was a working woman having a 8 years old son and was residing at Guwahati and there would be difficult to present herself at Dibrugarh for cross-examination.
- 7.** Shri Gupta has also drawn the attention of this Court to the Gauhati High Court Rules for video conferencing of Court which is Appendix 14 to the Gauhati High Court

Rules. Referring to Chapter 6 and the Rules framed thereunder more particularly Rule 6.1, the learned counsel has submitted that such video conferencing is permitted and therefore there was no impediment in allowing the cross-examination of the PW 4 by video conferencing. He submits that the restrictions imposed namely that such approach may implead a fair trial was also not present and therefore the impugned order dated 15.12.2022 is liable to be interfered with.

8. *Per contra*, Shri Sahad, the learned counsel for the respondent has submitted that adultery being the principal ground for seeking divorce in which PW 4 is the prime witness, cross-examination of the said PW 4 by video conferencing may not lead to an effective cross-examination. He submits that the fairness of the proceedings would also be affected if such cross-examination is done through video conferencing. Shri Sahad by referring to the chief examination of the said PW 4 has submitted that the affidavit-in-chief was deposed by the PW 4 at Dibrugarh and therefore the ground of difficulties now projected cannot be ground at all. He further submits that the Rules pressed into service contains Schedule II which mandates filing of petition in a particular format and the said Schedule II has not been followed in the instant case. It is also the submission of Shri Sahad, the learned counsel that the Rules does not specifically permits cross-examination by way of video conference and therefore no interference is liable to be made with the impugned order dated 15.12.2022.

9. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

10. It is not in dispute that the principal ground urged by the petitioner in his divorce petition is a ground based on adultery and it is also not in dispute that the PW 4 would be the star witness to prove the aforesaid ground as according to the petitioner, the source of information of the allegation of adultery is the PW 4.

11. This Court has noticed that the PW 4 had deposed her chief examination at Dibrugarh and therefore this Court finds force in the argument of Shri Sahad, learned counsel who has submitted that the ground of difficulty cannot be taken now at the stage of cross-examination as the same situation was existing when the PW 4 had made her deposition-in-chief and could come to Dibrugarh, when such chief examination could have very well being executed by way of affidavit at Guwahati itself. The Rules pressed into service on behalf of the petitioner no doubt makes arrangements for examination of witnesses by video conferencing and this Court may not accept the submission made on behalf of the respondent that since cross-examination by video conferencing has not been specifically mentioned, such procedure is not permitted. At the same time, such procedure which can be adopted would ultimately depends on the facts and circumstances of the case.

12. In the instant case, the learned Addl. District Judge, Dibrugarh has exercised his discretion by rejecting the petition by noting that the nature of allegation was of adultery which was the ground of the divorce and therefore examination of PW 4 by video conferencing would not be proper. This Court is of the opinion that such discretion which has been exercised by the Court who has direct interaction with the parties is not liable to be interfered in a routine or trivial manner.

13. This Court, as stated above has also seen that since the chief examination was executed by way of affidavit at Dibrugarh, the ground of difficulty may not be an adequate ground.

14. In view of the above, this Court is of the opinion that the present challenge with regard to the order dated 15.12.2022 is not sustainable and accordingly this petition is dismissed.

15. Consequently, the interim order passed on 22.02.2023 which has been

extended from time to time stands vacated.

16. Since the proceedings were stayed, in the meantime, the petitioner may be given an opportunity to present the PW 4 for cross-examination in accordance with law on a date to be fixed by the learned Court below.

JUDGE

Comparing Assistant