

GAHC010042172023



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

Case No. : CRP/35/2023

NEHA AGARWAL
W/O- VIKASH KUMAR AGARWAL D/O- DULI CHAND AGARWAL R/O-
GARG HARDWARE AND ELECTRICALS, A.T.ROAD, NEAR NIRMAL
CHARIALI, JORHAT- 785001, ASSAM, PRESENTLY RESIDING AT GIRLS PG,
KUMARPARA, GUWAHATI- 781009 MOBILE- 9540230003 EMAIL-
NEHA26882@GMAIL.COM

VERSUS

VIKASH KUMAR AGARWAL
S/O- MADAN LAL AGARWAL, R/O- KHUSHI COTTAGE, PRIYAMGIRI
BUILDING, 3RD AND 4TH FLOOR, NEAR RAILWAY GATE NO.9,
BHARALUMUKH, GUWAHATI- 781009, ASSAM, MOBILE-
9540230004/7701814297 EMAIL- AGARWALVIKASH99@GMAIL.COM

Advocate for the Petitioner : MR. M L PANDIA

Advocate for the Respondent : DR. N BAROOAH

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 14.12.2023

Heard Mr. M.L. Pandiya, learned counsel for the petitioner and Dr. N.

Borooah, learned counsel for the respondent.

2. By filing this revision under Section 115 CPC, the petitioner, who is the estranged wife of the respondent, has prayed for admitting this revision and upon hearing all the parties be pleased to direct the learned Subordinate Court to hear the petition filed before it under Section 340 CrPC and pass orders as it may deem fit thereafter.

3. The facts projected by the learned counsel for the petitioner is that the respondent had filed FC(Civil) Case No. 1121/2022 before the Court of learned Principal Judge, Family Court No. 3, Kamrup (M), Guwahati under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 for dissolution of the marriage. On the ground that a previous divorce petition was pending before the jurisdictional Court at Delhi, the petitioner had filed an application before the learned Principal Judge, Family Court No. 3, Kamrup (M), Guwahati for drawing up a criminal proceeding against the respondent under Section 340 CrPC and to dismiss the divorce petition with cost.

4. On receipt of a copy of the said petition No. 1182/2022, which was an application under Section 340 CrPC, the respondent by filing petition No. 1188/2022, sought to withdraw the divorce petition and accordingly, the learned Principal Judge, Family Court No. 3, Kamrup (M), Guwahati by an order dated 04.01.2023 allowed the prayer made in petition no. 1188/2022 and dismissed the proceeding of FC (Civil) 1121/2022.

5. On a query of the Court, the learned counsel for the petitioner as well as the respondent are unable to state as to whether on dismissal of F.C. (Civil) Case No. 1121/2022, the application under Section 340 CrPC filed by the petitioner has been disposed of or not.

6. If the said proceedings has not been disposed of, or if there is no order of

refusal by the learned trial Court to entertain the proceedings of Section 340 CrPC, this Court under Section 115 CPC cannot assume jurisdiction to entertain this application because of the fact that even if the revision under Section 115 CPC is entertained, the same would not result in disposal of the proceedings. Therefore, there would be an implied bar on the jurisdiction of this Court to entertain a revision under Section 115 CPC which would not have disposed of the suit/ proceeding.

7. In the event, the Court presumes that the learned trial Court has refused to pass any order on an application under Section 340 CrPC, then the provisions of Section 341 CrPC provides for remedy by way of an appeal.

8. Therefore, in view of the discussions above, the Court is of the considered opinion that as the proviso to Section 115 CPC provides that High Court shall not vary or reverse any order made or any order deciding an issue in course of a suit or other proceeding except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings as well as on the ground that no order of the learned trial Court has been challenged in this revision, as well as on the ground that if a refusal is presumed then under Section 341 CrPC, appeal would be the appropriate remedy. Hence, this Court is disinclined to entertain this revision. Therefore, the revision is dismissed.

9. The dismissal of the revision shall not prejudice the petitioner in availing the appropriate remedy as she may be so advised.

JUDGE

Comparing Assistant