

GAHC010012332023



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

Case No. : I.A.(Civil)/1534/2023

XXXXXXXXX
S/O RAMGOPAL RATHI
VILL.- WARD NO. 6
BARPETA ROAD
P.S.- BARPETA ROAD
DIST.- BARPETA
ASSAM
PIN- 781315.
VERSUS
XXXXXXXXX
D/O NAGINA SHAH
VILL.- ATHIABARI
P.S.- GOBARDHANA
DIST.- BAKSA
PIN- 781315.

Advocate for : MR Z ALAM
Advocate for : MS. P AGARWAL appearing for XXXXXXXXX

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

21.06.2023

(M. Zothankhuma, J.)

1. Heard Ms. S. Nazneen, learned counsel for the applicant and Ms. P. Agarwal, learned counsel for the opposite party.

2. This is an application for stay of the impugned judgment dated 28.11.2022 passed by the Principal Judge, Family Court, Barpeta in T.S.(M) FC Case No.271/2021, by which the prayer of the opposite party/plaintiff for dissolution of the marriage solemnized between the two parties has been allowed to be dissolved. The applicant/defendant has also been directed to pay Rs.10,00,000/- (Rupees ten lakh) only to the opposite party as permanent and future alimony.

3. The learned counsel for the applicant/appellant submits that stay should be granted with regard to the impugned judgment passed by the Family Court, in view of the fact that the applicant is not in a position to pay the amount of Rs. 10,00,000/-. She submits that though the applicant was the owner of a wholesale shop earlier, the shop had to be closed down due to the effects of the COVID Pandemic and the applicant is now working as a Manager in Jal Jeevan Mission, Assam and he is earning an amount of Rs.15,000/- (fifteen thousand) only, as salary per month . She submits that the applicant has some LIC policies, which are very minimal. As such, the applicant at this stage can pay Rs.1,00,000 (Rupees one lakh) only.

4. The learned counsel for the applicant also submits that unless a stay is granted the same will prejudice the applicant, as there is an execution case bearing no. M(Execution) FC Case No.1/2023 pending in the Court of the Principal Judge, Family Court, Barpeta.

5. On the other hand, the learned counsel for the opposite party has taken us to paragraph-6 of the Appeal Memo, wherein it states that the parents of the applicant had constructed an RCC building in the year 2020, which the opposite party had asked to applicant to sell so that he could purchase a nearby plot of land. She submits that the applicant is residing with his parents in the said building and the said building must have been constructed with the financial

help of the applicant. Further, the applicant has got a share in the property.

6. On hearing the counsels for the parties, we find that the learned Trial Court in the impugned judgment, has come to a finding that the evidence with regard to the applicant being a rich man having a wholesale shop at Barpeta Road Town is absolutely deficient. However, the learned Trial Court in the same breath, has awarded Rs.10,00,000/- as permanent alimony, by holding that the applicant is a man of sound physical capacity and he is deemed to profess sufficient means to earn money.

7. It appears from the impugned judgment dated 28.11.2022 that affidavits have not been filed by either of the parties in terms of the judgment of the Apex Court in the case of ***Rajnish vs. Neha & Another*** reported in ***(2021) 2 SCC 324***.

8. In view of the above reasons, it is difficult to fix a specific amount to be paid to the opposite party during the pendency of the appeal, while on the other hand there is a Damocles Sword hanging over the appellant in view of the pendency of the execution case. After giving considerable thought, we are of the view that the impugned judgment dated 28.11.2022 shall remain stayed, subject to deposit of Rs.3,00,000/- (Rupees three lakh) only within 4 (four) weeks from today. The same shall be deposited in the Registry of this Court, who shall thereafter disburse the said amount to the opposite party on proper identification.

9. The I.A. is accordingly disposed off.

JUDGE

JUDGE

Comparing Assistant