

GAHC010208412022



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

Case No. : Mat.App./38/2022

MONIKA DAS KARMAKAR
D/O KRISHNA DAS,
W/O GAUTAM KARMAKAR,
PRESENTLY RESIDING AT SANKAR ROAD, HOUSEFED HOUSE NO. 30,
P.O.- HATIGAON,
SUB-DIVISION- GUWAHATI,
PIN- 781038, KAMRUP (METROPOLITAN), ASSAM.

VERSUS

GAUTAM KARMAKAR
S/O NARAYAN KARMAKAR,
R/O BOKAKHAT, KOLKHOWA,
P.O.- BOKAKHAT,
PIN- 785612, DIST.- GOLAGHAT, ASSAM.

Advocate for the Petitioner : MS F BEGUM

Advocate for the Respondent : MS. N UPADHYAY

BEFORE
HONOURABLE THE CHIEF JUSTICE (ACTING)
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

For the Petitioners : Mr. S. Banik, Advocate

For the Respondent : Ms. N. Upadhyay, Advocate

Date of Order : **25.01.2023**

ORDER

(Soumitra Saikia, J)

Heard Mr. S. Banik, learned counsel for the appellant-wife.

2. Ms. N. Upadhyay, learned counsel appears for the respondent.
3. The appellant and the sole respondent were married on 13.07.2016 as per Hindu Marriage rituals. The marriage was solemnized in the district of Baksa, Assam. Pursuant to her marriage, the appellant moved with her husband to Bokakhat in the district of Golaghat, Assam and continued to reside there with her husband and family members. The appellant used to live with the joint family of her husband. The father-in-law, brother-in-law and the respondent-husband jointly run a Jewellery shop at Bokakhat in the name and style of "Uttam Jewellers". Out of wedlock with the respondent, the appellant gave birth to two daughters, namely, Sneha Karmakar and Neha Karmakar on 16.10.2017. Both the daughters are twins. It is the contention of the appellant that after the birth of the children, the appellant was harassed by her husband and the rest of the members of the joint family and as a consequence thereof she was forced to come out of the matrimonial home of her husband at Bokakhat to her father's house at Baksa. This happened in the month of April, 2018. During her stay in Baksa, her father looked after the appellant and her daughters and met all expenses required. Although, the appellant had been residing with her father, the respondent knowing fully well that she was unemployed and was required to raise their daughters, did not contribute towards any expenses incurred by them. While she was in Baksa at her father's house she came to informed that the respondent-husband had left for Bangalore as informed over telephone by the respondent himself. Subsequently, in the month of March, 2019, the

respondent returned from Bangalore and had visited the appellant in Baksa and compelled the appellant to move with him to Tezpur. The appellant upon being compelled by the respondent, moved with him to Tezpur along-with their daughters and they were put up in a rented accommodation at Tezpur. The appellant stayed in Tezpur for about three months and thereafter the respondent again left for Bangalore leaving the appellant and her daughters alone at Tezpur. It is the contention of the appellant that during her stay at Tezpur, she was physically abused by the respondent. In the year 2020, although the respondent had returned from Bangalore to Bokakhat , he did not come to Tezpur to meet the appellant and her daughters. In the month of March, 2020, the respondent telephonically conveyed the appellant to agree for a mutual divorce. The respondent, thereafter, did not come back to meet her and their daughters. A legal notice was also served by the respondent through his counsel. The appellant eventually had shifted to Guwahati for her livelihood. At present, she has arranged for her daughters' accommodation in her brother's house in Tezpur. It is contended that since last more than two years, there has been no cohabitation between the appellant and the respondent. The respondent does not make any contribution towards maintenance of the appellant and their daughters. Left with no alternative, the appellant filed a petition seeking divorce/maintenance before the Family Court being F.C. (Civil) Case No. 731/2022 under Section 13(1)(ia), 13(1)(ib) of the Hindu Marriage Act, 1955 read with Section 7(1)(a) of the Family Courts Act, 1894 for a decree of divorce between the appellant and the respondent.

4. Before the Family Court and during the currency of the proceedings, the appellant filed an application under Sections 24 and 25 for grant of maintenance *pendent lite*, monthly expenses towards proceedings and permanent alimony to

the petitioner. The Family Court vide order dated 16.09.2022 rejected the application filed by the appellant. Being aggrieved by the said order, the present appeal has been preferred by the appellant-wife.

5. The learned counsels for the parties have been heard. Pleadings on record have been perused.

6. The order impugned in the present appeal passed by the Family Court in Misc.(J) Case No. 73/2022 vide order dated 16.09.2022 reads as under:-

“Misc.(J) Case No. 73/2022

16.09.2022

Petitioner is present.

Perused the case record.

It appears that the instant Misc. case arises out of a petition, filed by the petitioner, under section 24 & 25 of the Hindu Marriage Act, 1955, praying for granting maintenance pendent lite and permanent alimony. Under section 24 of the Hindu Marriage Act, 1955, a petition shall be disposed of from 60 days from date of service of the notice, whereas a petition under section 25 of the Hindu Marriage Act, 1955, is to be decided at the time of passing any decree or at any time subsequent to passing of the decree. In the instant case, the petition has claimed two different reliefs, which are impossible to decide in the same proceeding.

Hence, the misc. case is not maintainable in the present form and therefore, stands dismissed. However, the petitioner is at liability to file fresh petition under sections 24 & 25 of the Hindu Marriage Act, 1955, separately”.

7. A perusal of the above order shows that since the application was filed under Sections 24 and 25 of the Hindu Marriage Act, 1955 praying for granting

maintenance *pendent lite* and permanent alimony, the Family Court held that under Section 24 of the Hindu Marriage Act, a petition shall be disposed of from 60 days from the date of service of the notice whereas under Section 25 of the Hindu Marriage Act, is to be decided at the time of passing any decree or at any time subsequent to passing of any decree. The Family Court held that the petition having claimed two different reliefs, the same are impossible to be decided in the same proceedings. Accordingly, the said misc. case was held to be not maintainable in the present form and was therefore dismissed. Liberty, however, was granted to the petitioner/appellant to file fresh petition under Sections 24 and 25 of the Hindu Marriage Act, 1955 separately.

8. Section 24 of the Hindu Marriage Act provides grant of maintenance during the pendency of any proceedings under the Act and where either the wife or the husband (wife) in the present case has no independent income sufficient for her or for her support and for the necessary expenses of the proceedings, upon such an application to be filed either by the wife or husband. The Family Court upon such satisfaction may pass an order for payment of expenses of the proceedings having regard to the income as it may appear reasonable to the Court. And such an application is to be disposed of within 60 days from the date of service of notice on the wife or husband as the case may be.

9. Under Section 25 of the Hindu Marriage Act, any Court exercising jurisdiction under the Act of 1955, on an application made to it for the purpose of by either the wife or the husband, at the time of passing of any decree or at any time subsequent thereto pay to the applicant for his or her maintenance and support such gross sum or such monthly or periodical sum for a term not

exceeding the life of the applicant as having regard to the respondent's own income and other property, the conduct of the party and other circumstances of the case as it may seem to the Court to be just. Any such order passed under Section 25(1) can also be altered and modified in terms of Section 25(2) and 25(3).

10. The present appeal is preferred against the order impugned on the following grounds:-

“A. For that the learned Family Court having dismissed MISC.(J) CASE No.73/2022 on the count that the petitioner had claimed two different reliefs which are impossible to decide in the same proceeding, took a technical view of the matter and as such, the same is liable to be set aside and quashed.

B. For that there being no legal embargo from claiming reliefs under section 24 and section 25 of the Hindu Marriage Act, 1955 by a same petition, the learned Family Court committed error of law in dismissing MISC.(J) CASE No.73/2022 on the count that the petitioner had claimed two different reliefs which are impossible to decide in the same proceeding and as such, the same is liable to be set aside and quashed.

C. For that in any view of the matter, the Order dated 16.09.2022 is liable to be set aside and quashed”.

11. From the impugned order, it is seen that the application was dismissed solely on the ground that it was filed under both Sections 24 and 25 of the

Hindu Marriage Act, 1955. Although, liberty was granted to the applicant to file afresh, keeping in view the mandate of the Hindu Marriage Act read with the Section 24 and 25 of the Act, this Court is of the considered view that the matter can be remanded back to the Family Court to re-decide the issue afresh by considering the application filed by the appellant to be under Section 24 of the Hindu Marriage Act, 1955. The Family Court will re-decide the issue afresh by giving opportunity of hearing to both parties and thereupon pass adequate orders as deemed appropriate in terms of provisions of Section 24 of the Hindu Marriage Act, 1955. It is needless to say that any decision of the Family Court on an application considered under Section 24 will not preclude any rights available under the Statute to an applicant under Section 25 of the Act, if such an application/prayer is made as per the mandate of Section 25.

12. In terms of the above, the appeal is accordingly allowed.

13. The Family Court will decide the matter expeditiously preferably within a period of 4(four) weeks from the date a certified copy of this order is presented by the appellant before the Family Court.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant