

GAHC010231622023



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

Case No. : CRP(IO)/332/2023

SANTOSH CHANDA
S/O- LATE SAMAR KUMAR CHANDA, R/O- RANGIRKHARI DAS COLONY,
SILCHAR, P.O. AND P.S. SILCHAR, DIST. CACHAR, ASSAM, PIN- 788001.

VERSUS

SUSMITA HOM CHOUDHURY
D/O- SRI SUBHAS HOM CHOUDHURY, R/O- SASHAN ROAD, P.S. SILCHAR,
DIST. CACHAR, ASSAM, PIN- 788713.

Advocate for the Petitioner : MR. S C BISWAS

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 13.10.2023

Heard Mr. S.C. Biswas, learned counsel for the petitioner.

2. By filing this application under Section 227 of the Constitution of India, read with Section 151 CPC, the petitioner, who is the estranged husband of the respondent has assailed the order dated 07.09.2023, passed by the learned Principal Judge, Family Court, Cachar, Silchar in F.C.(Civil) No. 152/2013. By the

said order, the learned trial Court had rejected petition no.2185/3 and 2184/1, by which the petitioner had prayed for calling of the records seized in connection with Silchar P.S. Case No. 947/2013, being tried as G.R. Case No. 1654/2013, before the Court of learned Judicial Magistrate First Class, Silchar to prove the genuinity of the marriage certificate in question.

3. The learned trial Court, by closing DWs had fixed the matter on 19.09.2023 for argument.

4. The learned counsel for the petitioner has submitted that during the pendency of the proceeding before the Family Court, Cachar, Silchar, the respondent wife had lodged an FIR pursuant to which the original marriage register was seized by the police in connection with Silchar P.S. Case No.947/2013, corresponding to G.R. Case No. 1654/2013. Accordingly, it is submitted that the original marriage certificate was required for just and proper adjudication of the issues between the parties. The learned counsel for the petitioner has also submitted that at whatever cost the Court deems fit, one opportunity be granted to the petitioner to lead evidence in the case.

5. From the materials available on record, it appears that the respondent had filed a petition under Section 25(iii) of the Special Marriage Act to pass a decree of nullity for annulling the marriage, which is allegedly stated to be fraudulent marriage registered on 30.01.2013. The said proceeding is registered as F.C.(Civil) Case No.152/2013, which is pending before the Court of learned Principal Judge, Family Court, Cachar, Silchar. In the meanwhile, the petitioner has also filed an application before the learned Principal Judge, Family Court, Cachar, Silchar under Section 9 of the Hindu Marriage Act for restitution of conjugal life, which is registered and numbered as F.C.(Civil) Case No. 101/2013. Apparently, it appears that on an FIR filed by the respondent, Silchar P.S. Case No.947/2013 corresponding to G.R. Case No. 1654/2013 has been

registered, which is being tried before the Court of learned Judicial Magistrate First Class, Cachar, Silchar.

6. It also appears from the contents of the order dated 04.02.2023, passed by the learned Principal Judge, Family Court, Cachar, Silchar that the said learned Court had allowed the petitioner to take steps for production of the documents from the office of the Marriage Registrar, Cachar. Although there is no material available on record, but as the petitioner is found to be aware of the proceeding of G.R. Case No. 1654/2013, pending before the Court of learned Judicial Magistrate First Class, Cachar, Silchar, the presumption is to the effect that the petitioner knows that the original marriage register was seized by the police and the same is in the records of the Judicial Magistrate First Class, Cachar, Silchar. Nonetheless, the petitioner had filed an application before the Family Court, Cachar, Silchar to call for records and the learned Principal Judge, Family Court, Cachar, Silchar by order dated 04.02.2023 had allowed the petitioner to take steps to call for the original record from the Marriage Registrar, Cachar, Silchar.

7. Be that as it may, it appears from the order dated 07.07.2023 that the respondent, i.e. the estranged wife of the petitioner had submitted the certified copy of the Marriage Certificate No. 49/2013 dated 30.01.2013 before the learned Family Court, Cachar, Silchar, which was kept on record. The official witness from the office of the District Registrar was present before the learned trial Court to depose before the Court. However, he had not brought any written authority to depose in the case. There is nothing available on record that there was any impediment on part of the petitioner to take leave of the learned trial Court and proof his case through the certified copy of the marriage certificate. There is also no reason assigned as to when the marriage register is seized by the police, however, the Marriage Registrar could have produce the original.

Therefore, the Court finds that the procedure adopted by the petitioner to call for the records from the Marriage Registrar was a calculated step to cause delay.

8. It also appears that the learned trial Court after granting several adjournments, by order dated 30.08.2023 had provided that adjournment was granted by putting the petitioner to notice that if the evidence of DWs were not exhausted, the Court would have to close the DWs on the next date. Therefore, as the prayer for adjournment was refused by order dated 07.09.2023, the Court does not find jurisdictional error in closing the DWs. In the impugned order, the learned trial Court has recorded that the case was of the year 2013 and that since 18.07.2023, the case was fixed for further DWs and therefore, the two petitions were rejected.

9. Be that as it may, the Court finds that the certified copy of the marriage certificate has already been brought on record of the learned trial Court.

10. Therefore, upon considering that the petitioner had notice of the order which was proposed to be passed on 07.09.2023 and yet he prayed for adjournment, the same was done at the risk of the petitioner and therefore, the said order does not call for any interference of this Court.

11. Accordingly, this application stands dismissed.

JUDGE

Comparing Assistant