

HIGH COURT OF TRIPURA
AGARTALA

Mat.App 2 of 2024

Sri Rajib Chakraborty
S/o- Sri Nibir Chakraborty
R/o- Natunnagar, Dighalia
P.O & P.S- Airport, District- West Tripura

----- Appellant

Versus

Smt. Ama Roy
W/o- Sri Rajib Chakraborty
R/o- Krishnanagar, TG Road
Opposite to Ramnagar Road No.3
PO: Agartala & PS: West Agartala,
District: West Tripura
PIN: 799001

---Respondent

For Appellant (s)	:	Mr. B. N. Majumder, Sr. Advocate. Mr. K. Deb, Advocate.
For Respondent(s)	:	Mr. S. Datta, Advocate.
Date of hearing and date of judgment and order	:	06.11.2024
Whether fit for reporting	:	No

HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order (Oral)

T.Amarnath Goud, J

Heard Mr. B. N. Majumder, learned counsel appearing for the appellant-husband also heard Mr. S. Datta, learned counsel appearing for the respondent-wife.

[2] This is an appeal under Section 19 of the Family Court's Act, 1984 read with section 28 of the Hindu Marriage Act, 1955 against the judgment and decree dated 13.11.2019 passed in T.S.(Divorce) 280 of 2016 by the Ld.Addl. Judge, Family Court, West Tripura, Agartala.

[3] The facts of the case of husband-appellant, in brief, is that his marriage was solemnized with the respondent on 11.03.2011 as per Hindu Rites and Customs.

After marriage appellant and the respondent started leading their conjugal life and out of their wedlock they were blessed with a female child who took birth on 13.12.2011. After taking birth of the daughter of the appellant, the respondent went to her father's house and since then she is residing there. After six months of birth of the child the appellant approached the respondent to come back to his house. But the respondent did not agree to come to her in laws house. The appellant on several occasions requested the respondent to return to his house but again the respondent refused. On 17.05.2012 respondent came to the house of the appellant and she took back all her golden ornaments and sarees. The respondent is a computer teacher and after six months of her delivery she again joined her school leaving her newly born baby to her mother. The appellant requested to give up the job. But the respondent did not consider it. After 8 months of the birth of the child the respondent returned back to the appellant's house. The respondent again started going to her school regularly. The appellant and his father requested her to give up the job. But respondent was adamant to give up the same. Later on one mistress was kept look after the baby. In the month of September, 2012 the appellant received a notice from the Women's Commission on 13.09.2012 and after receiving the same. The appellant came to learn that the respondent lodged complaint against him. On 03.12.2012 the respondent told the father of the appellant that she wants to go to her father's house for two days to which father of the appellant did not object to that.

[4] On 04.12.2012 the respondent left the house of the appellant with all bag and baggage and she did not return back. The appellant on several occasions requested her to come back but she flatly denied. Finding no alternative the appellant filed a RCR case bearing TS(RCR) 390 of 2012. The said case was dismissed on contest on 02.03.2016. The appellant after dismissal of the RCR case again approached the respondent to come back to his house but she refused again. The respondent was not

allowing the appellant to meet with his daughter. The respondent has deserted the appellant since 04.12.2012 and there is no hope of reunion between the parties. Hence the present case has been preferred by the appellant-husband.

[5] It is contended by the learned senior counsel for the appellant that the Ld. Court below fails to appreciate the factual aspect that the respondent never tried to restitution of conjugal rights rather the husband appellant tried to reconciliation of the marriage and a long separation by the respondent from the husbands family is a kind of cruelty whereby the appellant was detached from the family affection without any lawful excuse. Further, it is also extended by the senior counsel for the appellant that the Ld. Court below failed to appreciate the fact that the Ld. Judicial Magistrate 1 Class, Court No. 8 dismissed the contorted application u/s 12 of the Domestic Violence Act, 2005, on 30.10.2017, filed by the respondent being not considerable and the same also amounts to cruelty to the appellant, which is gross illegality and miscarriage of justice and required to be set aside. Moreover, the Ld. Court also failed to consider the fact that filing contorted application before the court of law against the appellant which the respondent fails to prove is also amounts to cruelty especially where the respondent did not prefer any appeal against the said order.

[6] Subsequently, it is also contended that the Ld. Court below failed to appreciate the fact spirit of marital piousness has diminishes and the sacred bonding has already become numb which makes the relationship mere a fleshless skeleton and in spite of that dismissed the suit which amounts to miscarriage.

[7] Being aggrieved by and dissatisfied with the judgment and decree of the learned court below, the present appeal has been preferred by the appellant.

[8] On the contrary, Mr. S. Datta learned counsel appearing for the respondent has contended before this court that the judgment and decree as passed by the learned court below is just and proper and needs no interference from this court. He

further prayed to dismiss the appeal by allowing the impugned order dated 13.11.2019 passed in T.S.(Divorce) 280 of 2016 by the Ld.Addl. Judge, Family Court, West Tripura, Agartala.

[9] At the very outset when this court asked the appellant whether he will continue to live with his wife after all had happened in the past. On asking, the appellant informed this court that their marriage has miserably broken and the appellant is not in a position to carry on with respondent-wife. This court cannot put pressure on any of the party to live together with each other. Many a time, it has been seen that a husband or wife approaches to the threshold of court to get justice against the wrong done to either of them. But when the court intervenes and take hold of the matter, parties are seen dropping case and leave the premise of the court with an intention to lead a conjugal life. But here is the case where it cannot be presumed that there is any scope left for the unison of the husband and the wife. Moreover, the role of the court is not to remain a spectator but to give justice without being partial to any party. It is seen from the record that the respondent wife is working lady and girl child is borne out of their wedlock. Having considered the future of the mother and daughter, the appellant-husband shall pay a lump sump amount for their better and secured future. This court also cannot shut its eyes for a lady who is before this Court seeking nothing but urging to unite with her husband. The unison seems impossible at this stage but this court, having no alternative and for the better future for the parties, grants divorce to them and directs the appellant-husband to pay a sum of Rs.10,00,000/- (Rupees ten lakh) as permanent alimony in three equal installment. Hence, the appellant and respondent are no longer legally married husband and wife and their marriage stands dissolved. It is made also clear that the respondent wife shall also withdraw all the cases pending against the appellant-husband listed before different forum with immediate effect.

[10] With the above observation and direction, this present appeal stands allowed and disposed of. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.

B.Palit, J

T. Amarnath Goud, J



Dipak