

HIGH COURT OF TRIPURA

A_G_A_R_T_A_L_A

Mat. App. No.07 of 2024

1. Sri Goutam Mali, son of late Narendra Mali, resident of N.F. Railway Colony, P.O. & P.S. Badarpur, District: Karimganj, Assam, PIN-788806.

.....Appellant

-VERSUS-

1. Smti. Niva Mali, wife of Sri Goutam Mali, daughter of Birendra Malakar, C/O Sri Uttam Malakar, resident of Railway Station, Dharmanagar, District: North Tripura, PIN-799250.

Present address:

Smti. Niva Mali, daughter of Sri Birendra Malakar, Wireless Colony, Near Sitala Bari, P.O. & P.S. Badarpur, District: Karimganj, Assam, PIN-788806.

..... Respondent.

B_E_F_O_R_E

HON'BLE MR. JUSTICE T. AMARNATH GOUD

HON'BLE MR. JUSTICE BISWAJIT PALIT

For Appellant(s)	:	Mr. N. Majumder, Advocate. Mr. S. Roy, Advocate.
For Respondent(s)	:	Mr. T. K. Deb, Advocate.
Date of hearing and Judgment and order	:	05.11.2024
Whether fit for reporting	:	NO

JUDGMENT & ORDER [ORAL]

[T. Amarnath Goud, JJ]

Heard Mr. N. Majumder, learned counsel appearing for the appellant also heard Mr. T. K. Deb, learned counsel appearing for the respondent.

[2] The present appeal has been filed under Section-28 of the Hindu Marriage Act, 1955 read with Section-19(1) of the Family Courts Act, 1984 from the judgment dated 14.12.2023 passed by the learned Judge, Family Court, Dharmanagar, North Tripura in Title Suit (Divorce) 31 of 2018 under

Section-13(1) (i-a) & (i-b) of Hindu Marriage Act, 1955 rejecting and dismissing the prayer of the appellant herein, for dissolution of marriage.

[3] The factual background of the case is that the marriage between the appellant and the respondent was solemnized in the year 1991. After few days of the marriage, the respondent started to live in most of the time at her paternal house. The respondent wife on being asked told that she does not like to live in a joint family. The appellant took the respondent to a rented house as per her wish where also the attitude of the respondent remains the same and day by day the behavior of the respondent gone arrogant. The respondent wife left the matrimonial home on 09-07-2005 and deserted on her will with daughters without any information.

[4] Thereafter, the respondent lodged a false case U/S 498 (A) of I.P.C. where the appellant was acquitted from the charge. The respondent filed several other cases including another case U/S 498(A) in Badarpur, Assam which is pending. The marriage between the appellant and the respondent has been broken down and there is no chance of their re-union since the respondent has left her matrimonial for 18 years and not a single time she visited the matrimonial home or her father attempted to resolve the dispute, after making communication with the appellant.

[5] It is on record that the respondent-wife deserted her matrimonial house willingly on her own whim on 09-07-2005. There is no scope of re-union between the parties and no purpose will be served keeping the marital tie, wherein deserve dissolution of Marriage by decree of divorce between the parties. The appellant ultimately preferred an application U/S 13(1) (i-a) & (i-b) of the Hindu Marriage Act, 1955 before the learned Judge, Family Court, Dharmanagar, North Tripura seeking dissolution of the marriage on or about 28.05.2018 registered as T.S (Divorce) 31 of 2018 whereby the learned Judge, Family Court, Dharmanagar, North Tripura by a judgment dated 14.12.2023 rejected and dismissed the suit of the appellant. The aforesaid decision of the learned Court is unjust, wrong, and perverse, which is deserves to be Set aside and reversed.

[6] In view of above and having heard the learned counsel appearing for the parties, the learned Court below has observed as under:

“To conclude, the prayer of the petitioner-husband Sri Goutam Mali for dissolution of his marriage with wife-respondent Smt. Niva Mali U/s 13 (1) (ia) (ib) of Hindu Marriage Act, 1956 stands rejected and dismissed.”

[7] Hence, the appellant has preferred the present appeal before this Court for redress.

[8] Mr. N. Majumder, learned counsel appearing for the appellant-husband has submitted that the cruelty and desertion committed on the part of the respondent wife, who now and then left the matrimonial home after marriage and interested to stay at the parental house at Dharmanagar most of the time. She having quarrel attitude and used to abuse the appellant and ultimately deserted on 09.07.2005 without any consent or information. It appears that the learned Judge Family Court below in deciding the issues involved in the suit solely relied upon the written statement, statement of fact/examination-in-chief of the respondent wife. It is stated by the appellant that the respondent on her own will deserted the appellant by his back and since the year 2005 till today, the respondent is residing at her parental house without any cogent reason.

[9] The learned Court below failed to appreciate the fact that the respondent wife miserably failed to establish any reasonable cause for remaining away from her matrimonial home. No valid reason or evidence has been shown by the wife respondent except some false accusation of torture by the appellant. The learned Court below by way of non-reading and misreading of pleadings and purported evidence on record arrived at absolutely wrong and erroneous findings causing miscarriage of justice to the appellant.

[10] The learned Court below in deciding the issues failed to consider the fact that in the argument the appellant stated that the respondent was never interested in discharging her marital obligation and does not want to stay with the appellant and has been filed one case after another against the appellant on

flimsy ground and has also filed a another case under Section- 498(A) IPC which is pending before the learned CJM, Karimganj, Assam, while in another such case under Section-498(A) filed against the appellant, the appellant was acquitted from the charge framed by the learned Judicial Magistrate, 1st Class Dharmanagar, North Tripura on 12-01-2006.

[11] The learned Court below ought to have accepted the petition granting divorce in favour of the appellant holding that the petition filed by the appellant for dissolution of marriage is a fit case since the wife respondent left her matrimonial 18 years back and in future naturally there is no scope of their re-union.

[12] The learned Court below miserably failed to give a prudent judgment in view of the fact that the rejection of the petition registered as T.S (Div) 31 of 2018 would have practically no permanent solution. The Respondent wife left her matrimonial house about 18 years back and created a false story of ousting from the matrimonial house. But, the respondent failed to mention the exact date of purported ousting the respondent from her matrimonial home to prove her contentions.

[13] The appellant is a victim of cruelty since marriage with respondent who was never interested to stay in joint family of the appellant and frequently left matrimonial home for which the appellant was compelled to shift to rented house even then he could not satisfy the respondent who always quarreled with the appellant. She was very much rude with him but he always discharged his obligations as husband to the respondent and till this date he is paying maintenance to the wife-respondent.

[14] The appellant is sanitary cleaner and presently posted at N. F. Railway, Badarpur and the family of the appellant's brother is taking care of him. Though the appellant living separately from the respondent since July 2005 but, regularly he is sending money to the respondent to meet her expenses. The marital tie between the appellant and the respondent has already been broken down and there is no chance of re-union and the respondent has

willfully withdrawn herself from the society of the appellant and living separately from the appellant.

[15] On the contrary it is submitted by the learned counsel appearing for the respondent that there is no reason for the respondent to leave her husband, the appellant herein, with two daughters unless compelled by her husband. It has been contended that the submission made from the side of the appellant that the respondent files cases under Section-498 (A) of IPC one after another is totally false. It was submitted that it was after the respondent being subjected to physical tortured by the appellant that she filed case under Section-498 (A) of IPC but it was settled with the hope by respondent that she would be able to live happy conjugal life with the appellant but the respondent was again physical tortured and compelled to file case under Section-498 (A) of IPC.

[16] It is stated and contended that the appellant during subsistence of his marriage with the respondent develop relation with another lady and also out of their relation one female child was born and the same has been admitted by the appellant in his cross-examination by stating that in the NRC he mentioned Smt. Sumati to be his wife and Miss Sweety Mali to be his daughter. It was argued that the admission of the appellant itself goes to establish that the allegation of the respondent against the appellant having illicit relation with another lady. He submitted that it was the objection raised by the respondent against such illicit relation maintained by the appellant that the respondent was subjected to severe physical torture.

[17] Having gone through the material evidence placed on record and heard the learned counsel appearing for the parties, this Court is of the considered view that the marriage had already been broken down long back and there is no scope for re-union and also would not be fruitful for either of the parties. Thus, to come to a definite conclusion and for ends of justice, it would be better for both of them if the dissolution of marriage is granted by setting aside the judgment of the learned Court below with permanent alimony. Thus, the same is accordingly ordered.

[18] As the wife-respondent has two daughters and considering the post holding by the appellant also leading his family with another daughter, permanent alimony i.e. Rs.10,00,000/- would be appropriate for dissolution of the marital tie between the parties. However, this amount would be paid by the appellant-husband to the wife-respondent in two equal installments and thus, the 1st installment i.e. Rs. 5,00,000/- would be paid on or before 15th December, 2024 and the second installment i.e. Rs.5,00,000/- would be paid on or before 15th January, 2025.

[19] With the above observation and directions, the present appeal stands allowed and disposed of by granting divorce by dissolution of marriage between the appellant and the respondent. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs.

B. PALIT, J

T. AMARNATH GOUD, J

A.Ghash

