

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

Mat. App. No.05 of 2023

Smti. Riya Saha, wife of Sri Sadhan Ch. Saha, daughter of Bikash Saha, resident of Charipara, police para, P.O. A. D. Nagar, P.S. A. D. Nagar, District: West Tripura.

.....Appellant

_V_E_R_S_U_S_

Sri Sadhan Ch. Saha, son of Sri Nepal Ch. Saha, resident of Milan Sanghya, Agartala, P.O. & P.S. A. D. Nagar, District: West Tripura.

.....Respondent

For Appellant(s)	:	Mr. D. Bhattacharya, Sr. Advocate. Mr. S. Das, Advocate.
For Respondent(s)	:	Mr. S. Lodh, Advocate. Mr. S. Majumder, Advocate.
Date of hearing and Judgment and order	:	24.04.2024
Whether fit for reporting	:	YES/NO

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

[T. AMARNATH GOUD, J]

Mr. D. Bhattacharya, learned senior counsel assisted by Mr. S. Das, learned counsel appearing for the appellant also heard Mr. S. Lodh, 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 of the Family Court Act, 1984 against the judgment and decree dated 28.04.2023 passed in T.S. (Divorce) 406 of 2020 by the learned Addl. Judge Family Court, West Tripura, Agartala.

[3] The facts leading to this case, in brief is that the marriage of the petitioner, the respondent herein was solemnized with the respondent, the appellant herein on 31.01.2010 according to Hindu Rites and Rituals in the house of maternal aunt of the respondent at Bhattapukur, Durga Palli socially with the consent of their parents and other family members. That, soon after the marriage both the couple started their conjugal life at Milan Sanghya, Agartala, West Tripura and in the same house the old parents of the petitioner has also been staying with their son and the petitioner is staying at a rented house and is

having his own small tea stall business in-front of Govt. Press Office, Bhatta pukur, Agartala.

[4] They led their peaceful marital conjugal life for six years only but on 28.07.2016, at about 11:30 am the respondent left her matrimonial house in absence of her husband and other in-laws without informing anyone. At that time, the petitioner was at his shop, his father was in his office and his mother was in her daughter's house to attend Manasha Mangal program at Jirania, West Tripura. On the same day, at about 01:00 pm, the petitioner came to his house to take lunch and found that his wife was not at home. Several times he tried to contact with his wife over phone, but her mobile was switched off and thereafter, he started to search his wife in other neighboring houses and also informed the same to his father and mother, but she was found nowhere and thereafter, the petitioner informed the same to his mother-in-law over telephone and his mother-in-law told him to come to her house by that day and not to take any stress.

[5] Thereafter, on the same day, i.e., on 28.07.2016. at about 03:30 pm, he and his two sisters, namely Smt Ratna Saha (Das) and Smt. Sipra Saha with one brother-in-law, namely Sri Balaram Saha went to his in-laws house and the mother of the respondent told them to wait for sometime. Thereafter, the mother of the respondent had called a person and after sometime, the respondent came to her paternal house accompanied by her maternal aunt and maternal uncle (meso). The petitioner asked the respondent about the reason to leave their house, but he preliminary was completely silent. After several conversations with her and her family members, she agreed to return back to her matrimonial house and at about 06:30 pm the respondent came with the petitioner at her matrimonial house.

[6] After reaching his house on the same day on 28.07.2016, at night, suddenly she informed him and her in-laws that she is not interested to lead conjugal life with the petitioner and if anyone forces her to stay she will commit suicide. Having no other alternative, the petitioner informed the same to his mother- in-law over telephone and requested her to come to his house soon. Then, her mother and her uncle (Meso) came to his house and from the door of the petitioner's house, both of them told the respondent to go with them at the paternal house of the respondent but the father of the petitioner opposed it and

requested them that they cannot take their daughter without informing the reason and/or fault on the part of the petitioner side but her mother was very much aggressive and hence the father of the petitioner informed the above said fact to the 'Mouchak Club Secretary' and requested him to come to their house without any delay.

[7] The Club Secretary came to their house and one small discussion took place in presence of both the sides. The mother of the respondent informed the Club Secretary in the said meeting that after reducing her anger about her husband and in-laws, the respondent will return back within a short period of time. The petitioner and his family members including Club Secretary have tried to know the reason of anger of the respondent, but utterly failed as the respondent side was not willing to say anything. Thereafter on 29.07.2016, the petitioner filed a petition before the Family Counseling Centre, Police Head Quarter, A. D. Nagar, Agartala narrated all the incidents with a hope to get back his wife as the respondent was totally adamant to return back and his in-laws also did not cooperate in regard to return of his wife. On 23.08.2016, counseling was held between both the parties in presence of Family Counselor, but the respondent totally declined to return back to her matrimonial house.

[8] Thereafter, another date was fixed on 08.09.2016, for second term counseling and on 08.09.2016 again, both the parties appeared, but no fruitful result came out as the respondent was totally reluctant to return back to her conjugal life with the petitioner. On 30.07.2016, the petitioner opened his almirah to take some documents and became shocked to see that the respondent took away all the golden ornaments with her and also took Rs.30,000/- which was given by him. That, from 29.07.2016 the petitioner on several times told and requested the respondent over telephone to return back to lead conjugal life, but the respondent always showed her unwillingness to join conjugal life with the petitioner. Having no other alternative, the petitioner filed a petition of RCR before the Ld. Judge of Family Court, Agartala, West Tripura to get back his wife vide case No.TS (RCR) 88 of 2016 which was allowed on 05.04.2019 by the Family Court, Agartala directing the respondent to restore her conjugal life with the petitioner within one month from the date of judgment but one year had already elapsed but the respondent did not return. After filing of the said case of RCR the respondent filed a divorce case vide No. T.S.(D) 309 of 2016 and the

same was dismissed by the Ld. Court as the respondent utterly failed to establish her case.

[9] The respondent also filed a petition under Section-125 of the Code of Criminal Procedure, 1973, for getting maintenance before the Ld. Family Court, Agartala, West Tripura and the same was numbered as Misc.485 of 2016. The said case was disposed of with an order of maintenance of Rs.2500/- per month to the respondent to be paid by the petitioner. Thereafter, the respondent also filed another case under Section 406 of the Indian Penal Code, 1860 and the same is numbered as CR 371 of 2017 and is pending before the Ld. Judicial Magistrate (1st Class), Court No.5, Agartala for trial. The petitioner further stated that he is having a small tea stall and Tiffin business in-front of Govt. Press Office, Bhatta Pukur, Agartala from where he earns good amount. Having tremendous financial crisis, the petitioner was compelled to take a loan of Rs.80,000/- (Rupees Eighty Thousand) from Tripura Gramin Bank, Bardowali Branch to start his business and the said loan was sanctioned on 17.10.2020 and the petitioner is paying Rs.2058/- (Rupees Two Thousand Fifty Eight) as monthly EMI to the Bank. It is also mentioned here that, the respondent has opened a Beauty Parlour, namely "DREAM LIGHT, SPA CENTRE", situated opposite to Bardowali BOC, near Chowdhury Mill, Agartala, engaging two other employees.

[10] Though, the petitioner runs a very small business and earns a meager amount, but he has never abstained himself from the duty towards his wife. He tried everything possible on his part to bring back his wife to his association and live a happy conjugal life along with him, but the respondent refused him on every occasion. Having no other alternative, the petitioner filed a petition under Section 9 of the Hindu Marriage Act, 1955 before the Ld. Judge of Family Court, Agartala, West Tripura and the same was numbered as T.S.(RCR) 88 of 2016. The respondent herein received the notice of the same and appeared in the instant matter.

[11] Thereafter, the Ld. Family Court, Agartala, West Tripura taking evidence from both sides and hearing both the sides allowed the prayer of the petitioner. The cause of action arose on 28.07.2016 when the respondent left the house of the petitioner without any reason and thereafter, on 05.04.2020 after completion of one month from the date of Judgment of T.S.(RCR) 88 of 2016 in

which the respondent was directed to join in her conjugal life with the petitioner and it has been continuing till today. Because of the above circumstances, the petitioner filed the instant case for passing a decree of divorce against the respondent.

[12] Having heard the learned counsel appearing for the parties and after gone through the material evidence on record, the learned Court below has observed as under:

“16. Petitioner has been able to prove the contents of cruelty and desertion in this case against his wife. Marriage should be dissolved on the above grounds.

In the result, the marriage between the husband-petitioner Sri Sadhan Chandra Saha and the wife-respondent Smti. Riya Saha is hereby dissolved by a decree of divorce with effect from today i.e., the 28th April, 2023. However, the respondent will continue to receive Rs.2,500/- per month as regular maintenance allowance as before payable to her savings Bank Account w.e.f. 01.04.2023 within 10th day of every English Calendar month until further order. No order of permanent alimony is given in favour of with considering her sound income from her own registered parlour....”

[13] Mr. D. Bhattacharya, learned senior counsel assisted by Mr. S. Das, learned counsel appearing for the appellant has submitted that the learned Court below committed error in passing the judgment and decree as such the impugned judgment and decree is rebursed to be set aside.

[14] The learned Court below failed to appreciate the issues so framed within the legal ambit of the Hindu Marriage Act, and therefore the erroneous judgment comes out which is required to be interfered by this Court. The petition filed by the appellant for decree of divorce has been dismissed which in any case may not rise a cause of action of the respondent herein to file a decree of divorce a fresh.

[15] In regard to the issue No.1 the appreciation of court reflected in paragraph 8 which has at all not an appreciation and furthermore, to expound cruelty the court relied the authority of the Apex Court in a manner suitable to pass a decree of divorce which at all not permissible in the eye of law which is gross illegality and miscarriage of justice and required to be set aside. The reasoning for leaving the matrimonial life having confronted with torture and therefore such decree needs to be set aside.

[16] It has been further contended that the decree Restitution of Conjugal Right have never be put into execution by the respondent nor any endeavour have been made to justify the restoration of conjugal right, therefore the grounds so made in this prayer for decree of divorce will not sustainable in law and the impugned order is perverse. The issues No.2 discuss the desertion for granting decree of divorce only in paragraph 12 which nothing an appreciation of evidence nor any statement by the parties, more so the court hold that the respondent placed a story, therefore the findings recorded are perverse require to be interfered by this Court. The learned Court below ought to have grant permanent alimony while granting decree of divorce, only 2500/- is paying monthly therefore permanent alimony is not allowed again a serious infraction require to be set aside.

[17] During the course of argument it is submitted that the husband is already married for the second time after the divorce is granted and in the process of negotiation there was an agreement between the parties for a sum of Rs.3.5 to 4 lakhs of permanent alimony but, for some reasons it did not happen. Hence prayed for permanent alimony.

[18] Now since the husband is remarried after the divorce is granted, even for a moment if this appeal is allowed by setting aside the divorce petition, no affective relief would be granted to the appellant-wife.

[19] In view of above, we are of the view that if the permanent alimony is granted as prayed for, ends of justice would be met. Accordingly a sum of Rs. 4,00,000/- is given to the appellant-wife as permanent alimony would be paid by the respondent-husband within a period of four months from today. With the above observation in regard to the permanent alimony, the instant appeal stands allowed and thus, disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed.

B. PALIT, J

T. AMARNATH GOUD, J

A. Ghosh

ANJAN
GHOSH

Digitally signed by
ANJAN GHOSH
Date: 2024.05.02
15:48:16 +05'30'