

**HIGH COURT OF TRIPURA
AGARTALA
MAT APP NO.09 OF 2022**

Sri Mithun Das,

Sri Gopal Ch. Das, Resident of Majumdar Para,
Near Kali Mandir, P.O.- Lankamura, Agartala,
P.S.- West Agartala, PIN-799009.

.....**Appellant(s)**

Versus

Smt. Suparna Poddar(Das),

W/o. Sri Mithun Das,
D/o- Sri Shibnath Poddar, Resident of South Shilpara,
P.O.- Ghati, Manikbhandar, Kamalpur.

.....**Respondent(s)**

For the Petitioner(s) : Mr. D. Bhattacharjee, Sr Advocate.
Mr. Samar Das, Advocate.
Mr. Soumyadeep Saha, Advocate.

For the Respondent(s) : Mr. S. Bhattacharjee, Advocate.
Mr. K. Nath, Advocate.

Date of hearing and delivery of
Judgment & Order : 13.03.2024

Whether fit for reporting : NO

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT
J U D G M E N T & O R D E R(ORAL)**

T. AMARNATH GOUD(J)

This 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 04.05.2022 passed in T.S. Divorce 342 of 2017 by the Additional Judge, Family Court, Agartala, West Tripura.

2. On the last date of hearing i.e. on 12.03.2024, when this case came up for consideration before this Court, the Advocates appearing were heard and the same was fixed on today for the personal appearance of both parties

3. Both parties are present today before this Court and initially the appellant-husband indicated before this Court that on the ground of '*cruelty*', he approached the Court below with a divorce suit but the same was dismissed. Thereafter, he has preferred the present appeal on the ground that the learned Court below failed to appreciate the mental and physical torture committed upon him by the respondent-wife. Appellant-husband further submits that the respondent-wife tried to kill his mother by mixing poison in her insulin. The appellant stated that respondent-wife used to misbehave with his parents. The appellant also submits that a false criminal case under Section 498A of IPC has been filed by the respondent. Appellant-husband further stated that since the respondent-wife left her matrimonial house and returned to her father's house, he was not allowed to even meet his children. As such, the appellant-husband prayed for an order of divorce by filing this present appeal.

4. Per contra the respondent-wife denied the said allegations and stated that her marriage was solemnized with the appellant on 11.04.2011 according to Hindu Rites and customs and

out of this wedlock they have 2(two) male children namely, Gobinda Das and Krishna Das who were born in 2012 and 2014 respectively. On the query of the Court, the respondent-wife stated that she does not want divorce as she does not want to live with the stigma of a '*divorcee woman*'. She has two children borne out of wedlock with the appellant and if the Court grants divorce then it will have a devastating effect on her and her children. She further states that the appellant-husband is regularly paying monthly maintenance of Rs.8,000/- and even fulfilling the demands and needs of their children. She thus prayed to quash this instant divorce application as it would adversely affect the little ray of hope for mitigating their differences in their conjugal life.

5. This Court made several attempts of reconciliation between the parties. In such an attempt, the respondent-wife stated that her husband voluntarily pays maintenance to her children and the children regularly have communication with their father and she also never forced her husband to pay such maintenance. Respondent-wife stated that she stays in Kamalpur, District and her husband's house is in Agartala Lankamura, and due to such long distance, frequent visitation of the appellant-herein with their children becomes hard. On the other hand, the appellant-husband stated that he is ready to pay permanent alimony to the respondent-wife and he is also ready to pay required maintenance

to their children. But is not interested to lead conjugal life with his wife.

6. Mr. Samarjit Bhattacharjee, learned counsel appearing for the respondent-wife stated that there is a chance of reconciliation between the parties and in the future, good sense may prevail between the parties.

To support his argument, learned counsel appearing for the respondent-wife relied upon **paras-17, 18 and 19** of the Hon'ble Apex Court Judgment reported in **2023 LiveLaw(SC) 873** titled as **DR. Nirmal Singh Panesar Vs. Mrs. Paramjit Kaur Panesar @ Ajinder Kaur Panesar**. The same is produced here-in-under:-

"17. In view of the afore-stated decision of the Constitution Bench, there remains no shadow of doubt that this Court can depart from the procedure as well as the substantive laws, and exercise its discretion under Article 142 for dissolving the marriage between the parties by balancing out the equities between the conflicting claims of the parties, however, such discretion should be exercised with great care and caution. It has also laid down that this discretionary power could be exercised for dissolving the marriage on the ground of its irretrievable break down to do "complete justice," though one of the spouses opposes the prayer for dissolution of marriage.

18. 18. However, in our opinion, one should not be oblivious to the fact that the institution of marriage occupies an important place and plays an important role in the society. Despite the increasing trend of filing the Divorce proceedings in the courts of law, the institution of marriage is still considered to be a pious, spiritual, and invaluable emotional life-net between the husband and the wife in the Indian society. It is governed not only by the letters of law but by the social norms as well. So many other relationships stem from and thrive on the matrimonial relationships in the society. Therefore, it would not be desirable to accept the formula of "irretrievable break down of marriage" as a strait-jacket formula for the grant of relief of divorce under Article 142 of the Constitution of India.

19. 19. So far as the facts of the present case are concerned, as stated earlier, the appellant-husband is aged about 89 years and respondent-wife is aged about 82 years. The respondent all throughout her life has maintained

the sacred relationship since 1963 and has taken care of her three children all these years, despite the fact that the appellant-husband had exhibited total hostility towards them. The respondent is still ready and willing to take care of her husband and does not wish to leave him alone at this stage of life. She has also expressed her sentiments that she

does not want to die with the stigma of being a "divorcee" woman. In contemporary society, it may not constitute to be stigma but here we are concerned with the respondent's own sentiment. Under the circumstances, considering and respecting the sentiments of the respondent wife, the Court is of the opinion that exercising the discretion in favour of the appellant under Article 142 by dissolving the marriage between parties on the ground that the marriage has irretrievably broken down, would not be doing "complete justice" to the parties, would rather be doing injustice to the respondent. In that view of the matter, we are not inclined to accept the submission of the appellant to dissolve the marriage on the ground of irretrievable break down of marriage.

7. On the other hand, Mr. D. Bhattacharjee, learned Sr. counsel assisted by Mr. Samar Das, learned counsel, and Mr. Soumyadeep Saha, learned counsel appearing for the appellant-husband submits that the Court below failed to properly appreciate the case and thus prayed to set aside and quash the impugned order and allow this appeal.

8. Heard both sides and perused the evidence on record.

9. It is revealed from the deposition of both parties that they have 2(two) children together and the appellant-husband, himself stated that he voluntarily pays maintenance to them. On the other hand, the respondent-wife urged before this Court that she is even ready to sacrifice her maintenance amount for the sake of saving her marital life. In such circumstances, this Court is not inclined to grant a decree of divorce in this present case as it might adversely affect the future life of the 2(two) children.

10. In terms of the submission made by both the parties, this Court is also hopeful that good sense may prevail among the parties keeping in mind the future prospects of their minor children. As such, this Court is inclined to dismiss this present matrimonial appeal, and accordingly, the same is ordered. However, the appellant-husband shall continue to pay the maintenance amount to the respondent-wife, which he has been paying. The respondent-wife is also at liberty to file any appropriate application seeking enhancement of maintenance amount in the future.

11. It is also observed by this Court that in the event that the father i.e., the appellant herein wants to have visitation rights of the children, the appellant-father can go and visit them and even take them and spend some time with the children.

12. With the above observation, the present appeal stands dismissed and the impugned order passed by the Court below is upheld. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

B. PALIT, J

T. AMARNATH GOUD, J

suhanjit

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