

**HIGH COURT OF TRIPURA
AGARTALA
F.A. 8/2023**

Sri Sabuj Majumder, son of Sri Subal Majumder, being Electrician now serving under the Commandant, 13th Bn. Tripura State Rifles, Kanchanpur, P.O. + P.S. Kanchanpur, District- North Tripura.

----Appellant(s)

Versus

Smt. Jyosmita Das, wife of Sri Sabuj Majumder, D/o Sri Ramesh Das, resident of Uttar Kumarghat, P.O. + P.S. Kumarghat, District- Unakoti, Tripura.

----Respondent(s)

For Appellant (s)	:	Mr. Biplab Debnath, Advocate
For Respondent(s)	:	Mr. HK Bhowmik, Advocate
Date of hearing and delivery of Judgment & Order	:	16.05.2024
Whether fit for reporting	:	No

**HON'BLE MR. JUSTICE ARINDAM LODH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA
Judgment & Order (Oral)**

(Arindam Lodh,J)

Heard Mr. B. Debnath, learned counsel appearing for the appellant-husband. Also heard Mr. HK Bhowmik, learned counsel appearing for the respondent-wife.

2. This appeal under Section 19 (1) of the Family Courts Act, 1984 has been preferred by the appellant-husband challenging the legality and validity of the judgment dated 30.05.2023 passed by the learned Judge, Family Court, Kailasahar, Unakoti, Tripura, in case no. Title Suit (RCR) 11 of 2021 whereby and whereunder the suit filed by the appellant-husband for restitution of his conjugal rights has been dismissed.

3. The facts in brief, are that, the marriage of the appellant and the respondent was solemnized on 19.05.2014 according to Hindu rites and customs and on solemnization of their marriage they started to lead their conjugal life in the house of the appellant. At the time of marriage, the appellant was serving as Group 'D' employee under 13th Bn. TSR and

posted at Kanchanpur, North Tripura. After a few months of the marriage, respondent left her matrimonial home and started to reside in her paternal residence with the consent of the appellant, but, after elapse of 15-20 days, the respondent expressed her unwillingness to return to her matrimonial home. Despite several requests of the appellant, the respondent did not return to her matrimonial home. Finding no other alternative, the appellant used to visit the paternal home of the respondent, and out of their wedlock one female child was born. In the year 2016 when the uncle of the respondent was involved in a murder case, then to avoid police interrogation, the respondent started to live in her matrimonial home, but after completion of police investigation, she again left her matrimonial home and started to reside in her paternal house.

3.1. Subsequently, in the year 2018, the respondent filed a petition before the learned Judge, Family Court, Kailasahar claiming monthly maintenance for herself and for her daughter and the said case was registered as Crl. Misc. (125) 80 of 2018. The petitioner i.e. the appellant herein after receipt of notice appeared before the learned court and the learned court below directed him to pay maintenance allowance @Rs.6,500/- per month to the respondent and her daughter and, accordingly, the said case was disposed of on compromise, and thereby the appellant had been paying Rs.6,500/- per month to the respondent as maintenance allowance.

3.2. Thereafter, the appellant being petitioner filed a petition under Section 9 of the Hindu Marriage Act before the learned Judge, Family Court, Kailasahar, for restitution of his conjugal rights and the same was registered as T.S. (RCR) 11 of 2021. In the said petition, the appellant contended that the respondent without any reasonable excuse withdrew herself from his society and on the other hand the respondent by filing written statement

denied the allegations made by the appellant herein and asserted that she was subjected to mental and physical torture on demand of dowry.

3.3. Upon hearing both sides, the learned trial court had dismissed the suit filed by the appellant. Thereafter, the respondent filed a petition for enhancement of the maintenance amount before the learned trial court and the same was registered as Crl.Misc (127) 04 of 2021. Upon hearing, learned trial court allowed the said petition enhancing the monthly maintenance at Rs.12,000/- per month. Being aggrieved, the appellant had approached this court.

4. On 18.04.2024, when the matter was taken up for hearing, this court had interacted with both the appellant and the respondent, who were present in-person before this court wherein this court found that there is a possibility of amicable settlement between the parties and, accordingly, listed the matter on 25.04.2024. When the matter was taken up on 25.04.2024 for hearing, the respondent-wife categorically expressed her willingness to dissolve her marriage with the appellant. The appellant has also acceded to the proposal made by the respondent-wife for dissolution of their marriage, and accordingly, both of them have agreed to file an application for dissolution of their marriage mutually.

5. On 13.05.2024 the appellant and the respondent have filed a joint compromise application being registered as I.A. 3 of 2024 seeking an order for dissolution of their marriage on mutual consent subject to the terms and conditions enumerated therein. The terms and conditions of the compromise petition, which they have jointly filed before this court is reproduced here-in-below:

“i. That, both the appellant and respondent have only minor daughter Miss Saanvi Majumder who is now aged about 7 years and now in custody of wife respondent and it is decided the aforesaid Custody will continue with the wife respondent till

attained her majority and it is also decided the visiting rights of the Husband appellant to his minor daughter will be decided on mutual consent of the parties.

ii. That, the Stridhan article of the wife respondent which are lying in the custody of Husband Appellant in his house, would take appropriate steps for returning those articles to the wife respondent, parental house and the transportation cost of the same to be borne by the husband appellant and the wife respondent after receiving of those articles would issue acknowledgement receipt.

iii. That, at present though wife respondent is receiving maintenance allowance of Rs. 4000/ for herself and Rs. 2500/- for her minor daughter but Ld trial court it has been enhanced for the wife Rs. 7000/- per month and for the minor daughter Rs. 5000/- per month and no arrear of maintenance allowance has been paid since the order passed on 16-05-2023 by the Husband appellant petitioner. However, at this stage both the parties has agreed to leave the matter upon the Hon'ble High court to decide the quantum of monthly maintenance allowance for the Wife respondent and her minor daughter considering the enhanced maintenance Order passed on 16-05-2024 in connection with Crl Misc. (127) 4 of 2021 and taking consideration of salary certificate for the month of April 2024 of the husband appellant or this Hon'ble High court may kindly Order instead of monthly maintenance, permanent alimony for the wife respondent with the order of monthly maintenance to the minor daughter as the Hon'ble High court deem fit and proper.

iv. That, parties also decided if this Hon'ble High court allowed this petition in that case they will take appropriate steps for withdrawal or disposal of Crl. Rev. P 64 of 2023 pending before this Hon'ble High court in court No.5."

6. Mr. Debnath, learned counsel for the appellant has prayed for reducing the maintenance allowance as enhanced by the learned trial court on the ground that the appellant himself is suffering from various ailments and also he has to look after his aged ailing mother who is seriously ill and has to incur substantial part of his salary towards their medical expenditure.

7. On the other hand, Mr. Bhowmik, learned counsel for the respondent has argued that the maintenance order as passed by the learned trial court is justified and no interference is required.

8. We have heard learned counsel appearing for the parties and also have gone through the joint compromise petition filed through I.A. 3 of 2024.

9. Admittedly, both the appellant and the respondent are living separately for more than 8 years. During this period they never stayed together even for a single day which indicates that their sentiments and emotions have dried up and there is hardly any chance of restoration of their

conjugal life. In the meantime, several litigations were also filed against each other. Further, it is evident from the record that on 25.04.2024, when this court took up the matter for hearing, the respondent-wife had expressed her willingness to dissolve her marriage with the appellant to which the appellant also acceded to. In the background of the circumstances, in our opinion, there is no chance of repairing the marital tie between the parties which prompted us to hold that the marriage solemnized between the appellant and the respondent has lost all its meaning, which cannot be refurbished or rebuilt. Any fresh attempt for survival of the marital tie between the appellant and the respondent would be a futile exercise since already all attempts of re-union through mediation and conciliation failed and any further attempt would be sheer wastage of valuable time and energy. We, personally have interacted with both, the appellant and the respondent, but, this court could not reach to a suitable solution and both the parties wanted their marriage to be dissolved.

10. In the backdrop of the above analysis, we have no other alternative but to hold that the marriage between the appellant and the respondent has irretrievably broken down and since the appellant and the respondent have mutually decided to dissolve their marital tie following certain terms and conditions of the joint compromise petition, the marriage between the appellant, Sri Sabuj Majumder and the respondent, Smt. Jyosmita Das stands dissolved by a decree of divorce. It is directed that the parties shall abide by the terms and conditions as enumerated in the joint compromise petition.

11. Now, the question comes for consideration as regards the quantum of maintenance the wife-respondent would be entitled to in the context of the case, which they could not settle.

12. We have heard both the wife-respondent as well as husband-appellant. The husband-appellant has produced his salary certificate wherefrom it reveals that his salary is Rs.36,000/- and odds per month.

13. However, this court is to take into consideration the financial capacity of the husband-respondent, his actual income, reasonable expenses for his own maintenance, and dependent ailing mother whom he is obliged to maintain under the law and liabilities, to arrive at the appropriate quantum of maintenance to be paid.

14. Accordingly, we are of the view that the appellant shall pay maintenance amount @ Rs.10,000/- per month to the respondent for herself and her daughter to be shared equally. The said amount shall be paid within 7th day of every English calendar month. Resultantly, the Order dated 16.05.2024 passed by the learned Judge, Family Court, Kailasahar, Unakoti in Crl. Misc. (127) 4 of 2021 stands set aside and modified to this extent. However, the respondent is at liberty to approach the appropriate forum and seek any assistance in the event of certain exigency in the process of pursuing the education of the daughter.

15. In view of the above, the instant appeal stands disposed. Prepare the decree accordingly.

The terms and conditions as laid down in the joint compromise petition apart from the directions given at para 12 of this judgment shall form a part of the decree.

Pending application(s), if any, also stands disposed.

JUDGE

JUDGE

SAIKAT KAR

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