

**HIGH COURT OF TRIPURA
AGARTALA**

FA No.11 of 2022

Shri Raja Saha

Son of Shri Ganesh Chandra Saha, resident of Town Pratapgarh, Road No.1, P.S. East Agartala, P.O. Agartala, PIN 799001, District West Agartala

..... Appellant(s)

V E R S U S

1. Smti Dipika Deb

Wife of Shri Raja Saha, D/O Shri Swapan Deb, resident of Sidhai Mohanpur, behind old cinema hall, near by-pass road, P.S. Sidhai, P.O. Mohanpur, PIN 799211, District West Agartala

2. Late Bijoy Bhowmik

Son of Bimal Bhowmik, resident of Khayerpur, Near Khayerpur School, P.S. Bodhjungnagar, P.O. Khayerpur, PIN 799008, District West Agartala (Appeal abated against him as per Order dated 25.04.2023)

..... Respondent(s)

For Appellant(s)	:	Mr. S. Lodh, Advocate.
For Respondent(s)	:	None.
Date of hearing	:	<i>1st February, 2024.</i>
Date of delivery of Judgment	:	<i>22nd February, 2024.</i>
Whether fit for reporting	:	NO

**HON'BLE MR. JUSTICE ARINDAM LODH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

JUDGMENT & ORDER

[S. Datta Purkayastha, J.]

The Judgment dated 24.06.2022 passed by the learned Judge, Family Court, Agartala in Title Suit (Divorce) No.275 of 2021 and related decree thereof are under challenge in this appeal whereby and whereunder the petition of the appellant-petitioner for divorce by way of dissolving his marriage with the respondent No.1 was rejected.

[2] As asserted by the appellant, he and respondent No.1 had previous love affairs for about one year or so, which ultimately resulted in solemnization

of marriage between them as per Hindu rituals on 20.01.2012, but bitterness started crawling in their life after about one and half months of their marriage.

[3] The appellant alleged that she started behaving rudely with him and with his aged parents on trivial domestic issues and even she would abuse his parents uttering that his father, who was a patient of mild cerebral stroke, should die. On 01.09.2012, she was found carrying pregnancy of three months and she tried to abort the foetus by punching on her abdomen and when appellant tried to resist her, she hit on his head with a mug causing bleeding injury. Thereafter, by consuming some medicines she ultimately aborted that pregnancy. As further alleged, she was reluctant to maintain her day to day domestic activities and even she would give him threat to harass him and his parents by lodging criminal cases with false allegations.

[4] In December, 2013, as grieved by the appellant, respondent No.1 went to her paternal house and on her return suddenly the appellant found contraceptive pill in her wallet despite the fact that they had no physical relationship for many months. On asking by him, she became nervous and tried to explain that at one of her friend's request she brought the same for that friend. When he tried to make further queries on that issue, she became furious and wrote one suicide note that she was going to commit suicide and for such suicide, the appellant and his parents would be responsible.

[5] On 25.12.2013, as alleged, the appellant detected several Whatsapp messages containing erotic conversation between respondent No.1 and respondent No.2, and she would be often found busy with her mobile

phone either talking or chatting with respondent No.2. On 03.01.2014, respondent No.1 went to her parental house to participate in one event, but ultimately she did not return to his house on the scheduled date. On phone call also she showed her reluctance to talk with him. Thereafter, the appellant went to her parental house and from his mother-in-law came to know that she even did not come to her house, rather she was staying in a rented house at Ramnagar, Road No.7. When he went there, he found respondent No.1 sitting on the lap of respondent No.2 and was talking with him. Suddenly seeing him there, they became puzzled. Thereafter, on 06.01.2014, she returned to her matrimonial home with the appellant where she confessed her guilt and assured the appellant that she would not continue such relationship further. Despite the same, after few days she was again found contacting with respondent No.2 through mobile phone and on 27.01.2014 in the evening without intimating anything she went to her paternal home and on resistance by the appellant, she told that she would not return to his house anymore as it was not possible to detach herself from the association of respondent No.2. Ultimately, she did not return despite persuasion made in this regard by the appellant. Under depressed condition, the appellant, on 02.09.2017 made one G.D. Entry at Maharajgang Bazaar town Outpost (Exbt.1).

[6] Before the Judge, Family Court, neither respondent No.1 nor respondent No.2 appeared to contest the case. Even, in the instant appeal also, respondent No.1 did not appear and respondent No.2 was reported to be dead.

[7] Mr. S. Lodh, learned counsel for the appellant contended that despite availability of unrebutted evidence of the appellant, learned Judge,

Family Court erroneously held that the appellant could not prove his case and that petitioner could not substantiate his allegations either by producing any other witness except himself or by proving any sort of evidence to establish adultery. According to learned Trial Court, the allegations of cruelty and desertion were based on the fact that the respondent No.1 was living adulterous life and when the allegation of extra-marital affair was not proved, the appellant was also not entitled to get divorce on the ground of desertion.

[8] We have given our thoughtful consideration to the pleading and evidences as available on the record and also to the submission of Mr. Lodh, learned counsel.

[9] According to us, the appellant has filed the petition for divorce on three grounds viz., (i) cruelty, (ii) desertion and (iii) adultery. Learned Trial Court though was justified in holding that the appellant could not prove that the respondent No.1 had voluntary sexual intercourse with respondent No.2 in terms of provision of section 13(1)(i) of the Hindu Marriage Act, 1955 but it had committed manifest error by intermixing the matter of desertion and cruelty with alleged adultery. The allegations as brought forward in the petition for divorce as indicated above, were also reiterated by the appellant in his examination-in-chief on affidavit which remained unrebutted either by way of absence of any cross-examination of the appellant or for not producing any other contra evidence. Though, there is no specific evidence on the point of sexual intercourse of respondent No.1 with respondent No.2 but regarding the matter of cruelty and desertion, the evidence of the petitioner remained uncontroverted. The G.D. Entry dated 02.09.2017 (Exbt.1) did not result in

initiation of any criminal investigation but at least it depicts the claim of the appellant regarding desertion of him by respondent No.1 from 27.01.2014 onwards. It has got some corroborative value with the evidence of the appellant as led by him. As it appears that the learned Judge, Family Court erroneously put the appellant on a stricter proof of the allegations made by him on the ground that the respondents were not contesting the case, though said Court was supposed to adjudicate the case on the basis of principle of preponderance of probability. We find no reason to disbelieve the appellant in his evidence led to support his assertions made in the original petition.

[10] In view of the above, the impugned judgment dated 24.06.2022 passed in Title Suit (Divorce) 275 of 2021 by learned Judge, Family Court, Agartala and consequent decree thereof are set aside. The marriage between the appellant and the respondent No.1 is hereby dissolved by a decree of divorce on the ground of cruelty and desertion.

No order as to costs.

Registry is to draw up decree accordingly and to furnish a copy thereof both to the appellant and the respondent No.1. Copy of respondent No.1 may be sent by Registered post with A/D.

The appeal is accordingly disposed of.

Return the LCRs.

Pending application(s), if any, also stand disposed of.

(S.D. PURKAYASTHA, J)

(ARINDAM LODH, J)