

GAHC030006692023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL
PRADESH)

Case No. : CRP/12/2023

Lalnunpuii
D/o R.Lalfakzuala, Nursery Veng, Aizawl, Mizoram

VERSUS

Sh M.Hunter Hnamte
S/o L.T.Zama Hnamte, Nursery Veng, Aizawl Present Address
Zokhawthar, Champhai District, Champhai

Advocate for the Petitioner : Mr. L.H. Lianhrima, Sr.Adv.

Advocate for the Respondent : Mr. Malsawmdawngzuala

ORDER

B E F O R E

THE HON'BLE MR. JUSTICE NELSON SAILO

Date of Hearing : 27.03.2024
Date of Order : 04.04.2024

ORDER (CAV)

Heard Mr. L H Lianhrima, learned Senior Counsel assisted by Mr. T Lalzekima, learned counsel for the petitioner. Also heard Mr. C Lalfakzuala, learned counsel for the sole respondent.

[2.] By filing the instant application under Article 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure, 1908 (CPC), the petitioner prays for setting aside the Order dated 25.10.2023 passed by the Civil Judge (Junior Division), Champhai in Divorce Certificate Application No. 5/2023. By the impugned order, the learned Court below rejected the objection raised by the instant petitioner about the territorial jurisdiction of the Court in entertaining the Divorce Certificate Application.

[3.] Mr. L H Lianhrima, learned Senior Counsel for the petitioner submits that the petitioner and the respondent were married on 20.07.2004 and out of their wedlock, three daughters and one son were born. On account of the education of their children, more particularly the daughters, the petitioner has been living in Aizawl alongwith their children. The respondent is Sub-Inspector of Police and was posted in Champhai Police Station. Thereafter, vide Office Order dated 06.01.2023, he has been posed to Zokhawthar Police Station as the 2nd O.C. The petitioner and their children apart from paying the respondent a flying visit have not stayed with him on regular basis either in Champhai or in Zokhawthar.

[4.] The learned Senior Counsel submits that the respondent on account of certain marital issues/differences filed a divorce certificate application before the learned Trial Court below at Champhai and the same was registered as Divorce Certificate Application No. 2/2023. Against the said application, the petitioner filed a preliminary written objection on the maintainability of the application stating that the application was not maintainable before the learned Trial Court on account of lack of territorial jurisdiction.

Despite the objection, the learned Trial Court vide the impugned Order dated 25.10.2023 held that the application was maintainable. Aggrieved, the petitioner is before this Court.

[5.] Mr. L H Lianhrima, learned Senior Counsel submits that as per Section 20 of the CPC, subject to the limitations prescribed, every suit is to be instituted in a Court within the local limits of whose jurisdiction the defendant or each of the defendants at the time of commencement of the suit actually and voluntarily resides or merits on business or personal works for gain. He submits that since the petitioner resides in Nursery veng, Aizawl, the Divorce Certificate Application should be filed in Aizawl. He, further submits that in fact the respondent himself is a permanent resident of Nursery veng, Aizawl and therefore, the divorce certificate application filed at Champhai in view of Section 20 of the CPC is not maintainable. In support of his submission, the learned Senior Counsel relies upon the case of *Laksman Prasad vs. Prodigy Electronics Ltd. & Anr., (2008) 1 SCC 618*.

[6.] Mr. C Lalfakzuala, learned counsel for the respondent, on the other hand, submits that the instant revision petition is filed by the petitioner by invoking Article 227 of the Constitution of India. He submits that since there is a remedy available under Section 115 CPC and also under Section 17(3) of the Mizoram Civil Courts Act, 2005 (Civil Courts Act), the instant revision petition filed under Article 227 of the Constitution of India will not be maintainable. In support of his submission, the learned counsel relies upon *Vindhunagar Hindu Nadargal Dharma vs. Tuticorin Educational Society & Ors., (2019) 9 SCC 538* and *Sadhana Lodh vs. National Insurance Co. Ltd. & Anr.,*

(2003) 3 SCC 524.

[7.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

[8.] Against the divorce certificate application filed by the respondent, the petitioner filed a preliminary written objection on the maintainability of the application for want of territorial jurisdiction. To consider the objection raised, the learned Trial Court has referred to Section 19 (iii) of the Mizo Marriage, Divorce & Inheritance of Property Act, 2014 (Act of 2014). Section 19(iii) provides that every petition under the Act of 2014 shall be presented to the Court within the local limits of whose original jurisdiction the parties to the marriage last resided together. However, from a perusal of the impugned order, it is seen that the learned Trial Court has not made proper discussions while giving reasons to arrive at the conclusion that both the parties last resided together in Zokhawthar and that Champhai and Nursery, Aizawl cannot be construed as the place where both parties last resided together. In short, the learned Trial Court being a Court of facts ought to have recorded its finding on merit by providing reasons/basis for coming to such a finding.

[9.] It may further be seen that Section 20 CPC provides that except for the limitations provided by the other provisions of the same Code, every suit is to be instituted in a Court within the local limits and whose jurisdiction the defendant/defendants voluntarily reside at the time of commencement of the suit.

[10.] On the applicability of CPC, the learned counsel for the

respondent seeks to impress upon the Court that in view of the amendment of the Mizoram Civil Courts Act by the Mizoram Civil Courts (Amendment) Act, 2007, CPC is to be followed only in spirit in all Civil Courts. However, the fact remains that CPC is not totally barred from its application in the Civil Courts and therefore, the question is how does one separate the spirit in one hand and the letters and spirit on the other while applying the CPC. It may also be seen that Section 39 of the Act of 2014 provides that the provisions of the Act of 2014 shall be in addition to and not in derogation of any other law for the time being in force. Section 39 of the Act of 2014 therefore cannot be ignored.

[11.] From the above discussion, it therefore appears that the learned Trial Court has not discussed and considered the points as mentioned in paragraph Nos.8, 9 and 10 of this order which otherwise it ought to have done.

[12.] With regard to the maintainability of the petition filed under Article 227 of the Constitution of India (in particular) and Section 151 CPC, it may be seen that the Apex Court in *Raj Shri Agarwal @ Ram Shri Agarwal & Anr., vs. Sudheer Mohan & Ors., 2022 O Supreme (SC) 1739 : 2022 SCC Online SC 1775* held that the availability of remedy under Section 115 CPC does not automatically render a writ petition under Article 227 of the Constitution of India to be not maintainable. The Apex Court further held that the remedy available under Article 227 of the Constitution of India is a constitutional remedy under the Constitution of India which cannot be taken away. In a given case, the Court may not exercise the power under Article 227 of the Constitution of India if the Court is of the

opinion that the aggrieved party has another efficacious remedy available under the CPC. However, to say that the writ petition under Article 227 of the Constitution of India shall not be maintainable at all is not tenable.

[13.] In the case of *Vindhunagar Hindu Nadargal Dharma* (supra), the dispute involved was regarding the convening of the General Body Meeting by the respondents. Challenging the same, the appellants filed a suit before the Principal, District Munsiff at Thoothukudi alongwith an application for injunction. Injunction was granted and against which, a revision was preferred before the High Court by invoking Article 227 of the Constitution of India. The High Court allowed the revision and set aside the order of injunction. Aggrieved, the appellants/plaintiffs approached this Apex Court and the Apex Court upon considering the case was of the view that against the grant of injunction by the Trial Court, there was already an appeal preferred before the Sub Court at Tuticorin under the Order 41 Rule XLI (r) CPC at the instance of one of the defendants and taking note of this fact amongst others, it held that the High Court was not justified in invoking its jurisdiction under Article 226 of the Constitution of India. The Apex Court observed that whenever the proceedings are under the CPC and the forum is the Civil Court, the availability of a remedy under the CPC, will deter the High Court not merely as a measure of self imposed restrictions, but as a matter of discipline and of prudence, from exercising its power of superintendence of the Constitution. The Apex Court however observed that in any case, even if the High Court was convinced that the Trial Court had proceeded hastily, the High Court could have only remanded the matter back to the Trial Court instead of allowing the application for injunction

without recording any finding on merits.

[14.] Having regard to the above decision and the facts and circumstances in the present case, this Court deems fit and proper that the instant revision petition should not be rejected on maintainability and instead, the matter should be remanded back for fresh consideration on the maintainability of the Divorce Certificate Application before the Trial Court at Champhai importantly, having regard to the fact that the Trial Court is a court of facts amongst others. Accordingly, the matter is remanded back to the learned Trial Court for fresh consideration on the basis of the observations made herein above. Parties shall appear before the learned Trial Court on 24.04.2024 alongwith a certified copy of this order and whereafter, upon giving due opportunity to the parties and hearing them, the learned Trial Court shall pass appropriate order on the maintainability or otherwise of the Divorce Certificate Application as expeditiously as possible and at any rate, within a period of 6 (six) weeks from the date of appearance of the parties.

[15.] In view of the conclusion arrived at as above, a reference to the other authorities relied upon is found to be unnecessary. Needless to say, the impugned order dated 25.10.2023 is hereby set aside. Interim order passed earlier shall stands merged with this order.

[15.] With the above observation and direction, the revision petition stands disposed of.

JUDGE

Comparing Assistant