

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

MAT. APP. No. 3 of 2020

Thoudam Ongbi Ashalata Devi

...Appellant

- Versus -

Thoudam Joteen Singh

... Respondent

B E F O R E

**HON'BLE THE CHIEF JUSTICE MR. D. KRISHNAKUMAR
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU**

24.02.2025

[Golmei Gaiphulshillu, J]

Heard Mr. Th. Mahira, learned counsel appearing for the appellant. None appears for the respondent.

The present matrimonial appeal has been filed before this Court with the following prayer:

- "(a) To admit the appeal for hearing on merits;
- (b) To call for the records of the case from the Ld. Family Court, Imphal East, Manipur.
- (c) To set aside the impugned order dated 16.09.2019 and Decree dated 21.09.2019 passed by the Hon'ble Family Court, Imphal East, Manipur in Mat. (Divorce) Suit No. 45 of 2019 (Annexure – A/1 (colly)).
- (d) To pass an interim order staying of the order dated 16.09.2019 and Decree dated 21.09.2019 passed by the Hon'ble Family Court, Imphal East, Manipur in Mat. (Divorce) Suit No. 45 of 2019 (Annexure – A/1(colly)).

- (e) To pass any further order or order as to the Hon'ble Court may seem fit and proper for ends of the justice and equity."

Mention is made here that the respondent herein (plaintiff) filed Mat (Div) Suit No. 45 of 2019 before the Ld. Family Court, Imphal East, Manipur for dissolution of marriage. The case was proceeded ex-parte and after recording the PWs on behalf of the plaintiff i.e. the respondent herein and after hearing the respondent/plaintiff, the Ld. Family Court allowed the prayer of the respondent/plaintiff. Operative portion of the order is extracted herein below:

"In view of the reasons and decisions made in the above point, I come to the conclusion that the plaintiff is entitled to the reliefs claimed for dissolution of his marriage with the Defendant on the ground of cruelty.

In the result, it is hereby ordered that the marriage between the plaintiff Thoudam Joteen Singh and the Defendant Thoudam Ongbi Ashalata Devi solemnized on 13.05.2005 is dissolved by a decree of divorce."

As aggrieved, the appellant herein filed the present matrimonial appeal on the following grounds:

- (i) The impugned order dated 16.09.2019 and decree dated 21.09.2019 of the Ld. Family Court, Imphal East, Manipur in Matrimonial (Divorce) Suit No. 45 of 2019 has been passed in violation of principle of natural justice inasmuch as the appellant was never served with notice in the connected case;
- (ii) The Ld. Family Court, Imphal East, Manipur has violated the provisions of Order 5, Rules 17, 19 and 20 of the Code of Civil Procedure, 1908 while accepting the report dated 22.07.2019 for service of summons to the appellant;

- (iii) The appellant came to know about the existence of the impugned order and decree only on 27.02.2020 when she was asked about the same in cross-examination in connection with Cril(C) Case No. 23 of 2019;
- (iv) The impugned order dated 16.09.2019 and decree dated 21.09.2019 are not acceptable to the appellant;
- (v) There is failure of procedural law while passing the impugned ex-parte impugned order and decree;
- (vi) The impugned order and decree is erroneous and is not sustainable in the eye of law;
- (vii) There are good grounds for filing the present Memo of Appeal;
- (viii) Tendering of summon, its refusal and affixation of summon and copy of the plaint on the wall should have been witnessed by person who identified the defendant (appellant herein) and her residence and witnessed such procedure;
- (ix) The report dated 22.07.2019 says nothing about witness who identify the defendant (appellant herein) and her residence and hence the said report should not be accepted as true and correct and cannot be acted upon.

Perused the record and in doing so, it is seen that in the trial proceeding, the appellant did not participate and make her pleadings on behalf of herself and this fact is reflected at Para No. 16 of the impugned judgment dated 16.09.2019 of the Ld. Family Court, Imphal East, apart from the submission made by the learned counsel for the appellant that she was not served with the notice.

We are of the view that since both the appellant and respondent were the husband and wife and out of the wedlock they have two children. This is a case concerning the appellant and respondent i.e. husband and wife and their two children and the case before the Ld. Family Court was for dissolution of marriage between the husband and wife and the marriage was admittedly solemnized on 13.05.2005.

It is settled principle of law that a reasonable opportunity of hearing which is synonymous to "fair hearing" should be given to the parties involved in the case. In this regard, the Hon'ble Supreme Court in catena of cases ruled that :

- (i) In (2003) 7 SCC 492 observed at para No. 23 the Honb'le Supreme Court observed that -

"23. For constituting a reasonable opportunity, the following conditions are required to be observed:

- 1. Each party must have notice that the hearing is to take place.*
- 2. Each party must have a reasonable opportunity to be present at the hearing, together with his advisers and witnesses.*
- 3. Each party must have a reasonable opportunity to present evidence and argument in support of his own case.*
- 4. Each party must have a reasonable opportunity to test his opponent's case by cross-examining his witness, presenting rebutting evidence and addressing oral argument.*
- 5. The hearing must, unless the contrary is expressly agreed, be the occasion on which the parties between the whole of their evidence and argument."*

- (ii) In (2024) SCC online SC 3728 at para No. 36 the Hon'ble Supreme Court observed that -

"36. It is a well settle principle of law that justice should not only be done but should be seen to be done. In this respect, it will be relevant to refer to the following passage from Jackson's Natural Justice (1980 Edn.):

"The distinction between justice being done and being seen to be done has been emphasized in many cases. The requirement that justice should be seen to be done may be regarded as a general principle which in some cases can be satisfied only by the observance of the rules of natural justice or as itself forming one of those rules. Both explanations of the significance of Secretary [1977] 1 WLR 766, 772] ex. P. Hosenball, where after rules, the breach of which will prevent justice from being seen to be done" he went on to describe the maxim as one of the rules generally accepted in the bundle of rules making up natural justice".

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It is again absolutely basic to our system that justice must not only be done but must manifestly be seen to be done. If justice was so clearly not seen to be done, as on the afternoon in question here, it seems to me that it is no answer to the applicant to say: "Well, even if the case had been properly conducted, the result would have been the same. That is mixing up doing justice with seeing that justice is done (per Lord Widgery, C.J. at p. 1375)."

- (iii) In (2017) 15 SCC 719 at para No. 20 the Hon'ble Supreme Court observed that –

"20.

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Reasonable opportunity of hearing which is synonymous to 'fair hearing', it is no longer res integra, is an important ingredient of audi alteram partem rule and embraces almost every facet of fair procedure. The rule of "fair hearing" requires that the affected party should be given an opportunity to meet the case against him effectively and the right to fair hearing takes within its fold a justice decision supplementively by reasons and rationale. Reasonable opportunity of hearing or right to "fair hearing" casts a steadfast and sacrosanct obligation on the adjudicate to ensure fairness in procedure and action, so much so that any remiss or dereliction in connection therewith would be at the pain of invalidation of the decision taken. Every executive authority empowered to take an administrative action having the potential of visiting any person with civil consequences must take care to ensure that justice is not only done but also manifestly appears to have been done."

In the facts and circumstances of the case in hand and in the line of the observation made above by the Hon'ble Supreme Court, we are of the view that the Ld. Trial Court ought to hear both parties at length and ought to

allow both parties to have their say in respect of their cases before the Court. In such circumstances, we are of the view that it will be proper for us for the ends of justice to remit back the case for fresh trial to the Ld. Family Court, Imphal East and accordingly we set aside the impugned order dated 16.09.2019 passed by the Ld. Family Court Imphal East.

The Ld. Family Court is directed to take steps to make sure that both the parties are present before the Court, to allow both the parties to present their pleas and to proceed the case with both the parties' presence afresh.

It is further ordered that since the case has been filed and pending since 2019, the Ld. Trial Court is directed to conclude the trial of the case within a period of 6 (six) months from the date when both the parties appear before the Court.

With the above finding, the present matrimonial appeal is disposed of.

Registry is to take steps accordingly.

JUDGE

CHIEF JUSTICE

Bipin