

**THE HIGH COURT OF TRIPURA
AGARTALA**

Mat. App. No. 12 of 2013

Sri Santi Hrishidas,
son of late Mukundu Hrishidas
of 23 Madhya Para, P.O. : R. K. Pur,
P.S. : R. K. Pur, Dist: South Tripura

.....Appellant

- VERSUS -

Smti Rina Hrishidas,
daughter of late Gaurgopal Das,
wife of Sri Santi Hrishidas, of Vill: Suryamaninagar,
P.O. : Suryamani Nagar, P.S: Amtali, Dist: West Tripura

.....Respondent

**B E F O R E
THE HON'BLE MR. JUSTICE U. B. SAHA
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the appellant	:	Mr. R. Dutta, Advocate
For the respondents	:	Mr. H. Laskar
Date of hearing & delivery of judgment and ord	:	13.10.2015
Whether fit for reporting	:	NO

Judgment and Order (Oral)

(Talapatra, J)

Heard Mr. R. Dutta, learned counsel appearing
for the appellant and Mr. H. Laskar, learned counsel
appearing for the respondent.

[2] By this appeal filed under Section 19(1) of the
Family Courts Act, 1984, the appellant has challenged the
judgment and order dated 30.04.2013 delivered in T.S.

(Divorce) 366 of 2010 by the learned Judge, Family Court, West Tripura, Agartala, rejecting the petition filed by the appellant under Section 13(1) (i) (ia) and (ib) of the Hindu Marriage Act, 1955 on the ground of cruelty and desertion.

[3] There is no dispute that the marriage between the parties was solemnized on 02.05.1974 and in the wedlock one daughter, namely, Papiya was born. At the time of filing of that petition, seeking divorce, that daughter was aged about 26 years.

[4] It has been pleaded by the appellant that for living 23 years separately, the marriage has become lifeless and it has broken beyond retrieval. Breaking down of marriage beyond retrieval by itself, according to Mr. R. Dutta, learned counsel appearing for the appellant is cruelty.

[5] Apart that, the appellant has also pleaded that the respondent has married again and settled in that marital life. However, from the written statement filed by the respondent it is apparent that the respondent has stoutly denied that allegation.

[6] Both Mr. R. Dutta and Mr. H. Laskar, learned counsel respectively appearing for the appellant and the respondent have concurred that the proceeding in the family court has prejudiced both the appellant and the

respondent because they were not given adequate opportunity of cross examining the witnesses.

[7] We have scrutinized the record and it appears that virtually there is no cross examination of the witnesses. Having regard to that aspect, this Court is not inclined to enter into the merit of this case.

[8] It has been already decided by this Court in a catena of cases that when the parties are not intellectually capacitated, it will be the usual duty of the family court to ask them whether they would require assistance of the counsel and in that event the family court would for purpose of maintaining the sanctity of the judicial process afford the counsel to the parties for representing them.

[9] It is needless to say that the art of cross examination requires skill and legal expertise. The ordinary persons may not have that skill. However, while observing this, this Court is not oblivious of the fact that there are some exceptional human beings who even being not a lawyer may carry out the cross examination skillfully. It is totally upon the family court to weigh the capability of the parties for that purpose.

[10] Having regard to the status of the parties in this case, we are of the view that the family court has failed in its duty. The family court ought to have allowed the parties

to carry out the cross examination in the required manner with assistance from the counsel and, as such, the impugned judgment and order is set aside.

[11] The matter is remanded for hearing afresh from the stage of examination of the witnesses meaning, both the parties be allowed to adduce evidence afresh followed by the cross examination. Since the matter is pending since 2013, there shall be all efforts by the family court to dispose the matter as expeditiously as practicable.

[12] Accordingly, the matter is remanded for disposal in accordance with law and having strict regard to what has been observed herein above. The appeal is therefore, allowed partly. Send down the LCRs forthwith.

[13] The appellant shall continue to pay the maintenance at the same rate he is paying now, to the respondent uninterruptedly till the disposal of the suit being T.S. (Divorce) 366 of 2010.

[14] Copies of this order be furnished to the learned counsel appearing for the parties.

JUDGE

JUDGE

A.Ghosh.