

**THE HIGH COURT OF TRIPURA
AGARTALA**

MAT APP 07 of 2011

Sri Uttam Barman,
son of Sri Biswanath Barman,
of Bidyasagar Chowmuhani,
Jogendranagar, P.S. East Agartala,
West Tripura

.....Appellant

VERSUS

Smt. Radha Rani Barman @ Jayanti,
wife of Sri Uttam Barman,
daughter of Sri Manindra Barman,
of Ramchara (Kalitilla), P.O. Nabinagar,
P.S. Bishalghar, District-West Tripura

.....Respondent

**BEFORE
THE HON'BLE MR. JUSTICE UB SAHA
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the appellant	: Mr. AC Bhowmik, Sr. Advocate Mr. D Sarkar, Advocate
For the respondent	: Mr. B Majumdar, Advocate
Date of hearing and delivery of judgment	: 24.11.2015.
Whether fit for reporting	: No.

JUDGMENT AND ORDER (ORAL)

(Talapatra, J.)

Heard Mr. AC Bhowmik, learned senior counsel assisted by Mr. D Sarkar, learned counsel for the appellant as well as Mr. B Majumdar, learned counsel for the respondent.

2. This is an appeal from the judgment and order dated 20.05.2011 delivered by the Judge, Family Court, West Tripura, Agartala in Title Suit (Divorce) 10 of 2009.

3. At the outset, Mr. Bhowmik, learned senior counsel has submitted that from a glance to the deposition it would appear that no opportunity of cross-examination was granted to the parties in respect of the witnesses, namely, Uttam Barman (PW1), Harendra Das (PW2), Shibu Saha (PW3), Ratan Acharjee (PW4) and Dr.Jiban Chakraborty (PW5). Mr. Bhowmik, learned senior counsel has also submitted that the statement of PW5 Dr.Jiban Chakraborty has been structured in such a way that it is virtually no reflection of the records of the medical intervention and as such the petitioner had a right to cross-examine his own witness but he was not permitted to do that.

4. What appears from the deposition of the witnesses led by the respondent is that there is scanty cross-examination. Mr. Bhowmik, learned senior counsel on the last lap of his submission has stated that the petitioner is a semi-literate person and does not have any expertise how to lead the cross-examination and even examination-in-chief for the purpose of proving his own case. Notwithstanding the materials available with the petitioner, he could not even place those materials in a manner to get those admitted in the records of the case. He has, therefore, prayed that the suit be remanded for retrial affording opportunities to the petitioner to cross-examine the witness as well as to lead the additional evidence which he could not produce at the time of trial for his lack of expertise and for absence of assistance from the lawyer.

5. Mr. Majumdar, learned counsel appearing for the respondent has submitted that there is no infirmity in the judgment. On merit, this appeal is liable to be dismissed.

6. However, after scrutinizing the records, particularly, the records of evidence, we are persuaded to hold that the way the evidence has been recorded by not providing the parties, assistance of the lawyer, this matter should be remanded for retrial from the stage of examination of witnesses. Accordingly, it is ordered.

7. The petitioner may be permitted to lead additional evidence subject to laying the grounds for non-production of such evidence at the relevant point of time. The Judge, Family Court, West Tripura, Agartala shall decide the matter on due consideration.

8. The impugned judgment and order, for the above reasons, is interfered with and set aside. The Judge, Family Court, West Tripura, Agartala shall decide the matter as expeditiously as possible. If the Judge, Family Court, West Tripura, Agartala finds that there is a possibility of rapprochement or reconciliation between the parties, he should make such attempt.

9. The parties shall appear before the Judge, Family Court, West Tripura, Agartala on 20.01.2016. No further notice would be issued to the parties by the Judge, Family Court, West Tripura, Agartala as the date has been fixed at the request and in presence of Mr. Bhowmik, learned senior counsel and Mr. Majumdar, learned counsel, respectively for the appellant and the respondent.

Send down the LCRs.

JUDGE

JUDGE

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