

**THE HIGH COURT OF TRIPURA
AGARTALA**

MAT APP. 01 of 2012

Smt. Santi Rani Debbarma,
wife of Sri Samir Ranjan Debbarma
in care of Late Laru Chandra Debbarma,
resident of Biswai Sardar Para, P.O.- Gabardi,
P.S.- Takarjala, District- West Tripura.

... **Appellant.**

- **Versus** -

Sri Samir Ranjan Debbarma,
son of Late Arun Debbarma,
resident of Biswai Sardar Para, P.O. Gabardi,
P.S. Takarjala, District- West Tripura.
Office of the Sub Divisional Medical Officer,
Kamalpur, Department of Health, Government of Tripura.

... **Respondent**

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

For the appellant	: Mr. DR Choudhury, Advocate.
For the respondent	: Mr. Bidyut Majumder, Legal Aid Counsel
Date of hearing & delivery of Judgment and Order	: 25.03.2015.
Whether fit for reporting	: NO

JUDGEMENT AND ORDER (ORAL)

(Talapatra J)

Heard Mr. DR Choudhury, learned counsel appearing for the appellant-wife as well as Mr. Bidyut Majumder, learned counsel appearing for the respondent-husband.

2. The respondent, Dr. Samir Ranjan Debbarma is also present in the Court when the matter has been taken up for final disposal.

3. Mr. Chaudhury, learned counsel appearing for the appellant has at the outset submitted that the notice of the petition filed under Section 13(1)(ia) & (ib) of the Hindu Marriage Act, 1955

for dissolution of marriage by a decree of divorce has not been properly served on the appellant herein, who was the respondent in the same petition being T.S. (Divorce) 263 of 2010 in the court of the Judge, Family Court, West Tripura, Agartala.

4. We have scrutinized the records as to ascertain the veracity of the said statement and found that once the notice was issued by registered post with AD and the said registered article containing the notice was returned to the court with affixation 'insufficient address Not Known'. Thereafter, it appears that the respondent, the petitioner in the said T.S. (Divorce) 263 of 2010 was allowed to serve the notice by way of substituted service as provided under Order 5 Rule 20 of the Code of Civil Procedure and accordingly the notice was published in 'Tripura Darpan' dated 03.03.2011. Copy of the said newspaper was also furnished to the Family Court on 01.04.2011 by the respondent herein.

5. Mr. Chaudhury, learned counsel has further submitted that the appellant was appearing the said Family Court in connection with Misc. 97 of 2011 and Misc. 29 of 2011 but the respondent had not taken any initiative to serve the notice upon the appellant when the appellant had in attendance in those cases. It further appears to us that the impugned judgment has been passed on 03.11.2012 without observing whether the notice has been properly served or not. From the order dated 11.01.2011 it appears as under:-

**"The petitioner is present but the respondent is absent.
Issue fresh notice through post".**

But, there is no reflection what happened to the notice issued by the nazaret of that court on 25.08.2010. Whether the said

notice was properly served or not and/or why the Family Court has taken recourse to the service of the notice by the registered post.

6. As already observed, the said registered article containing the notice was returned with observation that address was insufficient and the person was not known to the area. Thereafter, it appears that without any application from the respondent, by the order dated 22.02.2011 the Family Court permitted the respondent to cause substituted service by publication of the notice in 'Tripura Darpan'. For purpose of allowing the substituted service certain pre-requisites are to be considered by the Court and observance of those would only permit the substituted service. Those pre-requisites are well provided in Order V, Rule 20 which reads as under:-

"Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court house and also upon some conspicuous part of the house, if any, in which the defendant is known to have last resided or carried on business or personally worked for gain or in such other manner as the Court thinks fit".

7. On considering those pre-requisites the Court may allow the substituted service in terms of Rule 20 Clause 1A of Order V of the Code of Civil Procedure in relegation of the regular process otherwise such direction for substitutive service is bound to fail the scrutiny of law inasmuch as non observance may give leverage to the unscrupulous persons to contaminate the process which stands for justice. We do not find such observance, at least there is no reference in the order dated 22.05.2011.

8. Having regard to that, we are satisfied that the publication in the Bengali newspaper may not cause the adequate service in the given circumstance. Moreover when the respondent knew that there are two cases pending in the same court between the same parties he should have urged the Family Court to cause service on the appellant in those proceedings if he had bonafide intendment.

9. Having held so, we are of the view that the exparte judgment dated 03.11.2012 passed by the Judge, Family Court, Agartala, West Tripura in Title Suit (Divorce) 263 of 2010 cannot survive and accordingly it is set aside. However, without any observation on merit, the case is remitted back for re-adjudication to the Judge, Family Court, Agartala, West Tripura and the parties for that purpose shall appear before the Family Court on **27.04.2015**. It is needless to say that the appellant who is the respondent in T.S.(Divorce) 263 of 2010 shall be provided with opportunity for filing the written statement/written objection. The proceeding thereafter be brought to its logical end in accordance with law. Till disposal the appellant shall continue to get the maintenance from the respondent @Rs.20,000/- per month in terms of the order dated 16.10.2012 passed by this Court in this appeal and clarified later on by the order dated 19.11.2012.

10. Accordingly, this appeal stands disposed of. On preparation of the decree, LCRs be sent down.

JUDGE

JUDGE