

IN THE HIGH COURT OF TRIPURA
A G A R T A L A

MAT App. No.23 of 2013

Appellant:

Sri Snehasish Nath,
S/o. Sri Santosh Nath,
Resident of Village and PO - Laxminagar,
PS – Churaibari,
District – North Tripura.

BY ADVOCATE:

Mr. G. K. Nama, Advocate.

– Versus –

Respondent:

Smt. Sanjita Debnath @ Gauri,
W/o. Sri Snehasish Nath,
D/o. Sri Satish Debnath,
Resident of Village and PO - Pecucherra,
PS – Panisagar,
District – North Tripura.

BY ADVOCATE:

Mr. S. Bhattacharjee, Advocate.

B-E-F-O-R-E
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR.JUSTICE S. TALAPATRA

Date of hearing and delivery : **03.08.2015**
of judgment and order

Whether it is fit for reporting : NO

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CJ)

This appeal by the husband is directed against the judgment
and decree dated 10th July, 2013 delivered by the learned Additional

District Judge, North Tripura, Dharmanagar whereby the divorce petition (Title Suit (Divorce) No.01 of 2012) filed by the husband was dismissed.

02. The undisputed facts are that the appellant, hereinafter referred to as the husband and the respondent, hereinafter referred to as the wife, were married according to Hindu Rites on 10th March, 2004. It is also not disputed that two children were born out of this wedlock. The case of the husband is that his wife had deserted him for more than two years and therefore, he is entitled to divorce. The learned court below held that the appellant had failed to prove that the wife had deserted the husband because according to the learned trial court the wife had reasonable ground to live separately from the husband and therefore, dismissed the petition.

03. It would be pertinent to mention here that prior to filing the divorce petition, the appellant had earlier filed a petition for restitution of conjugal rights being case No.Title Suit (RCR) No.01 of 2009 in the Court of the Additional District Judge, North Tripura, Dharmanagar. In that petition, it was alleged that after the marriage two children were born and in the first part of the year 2006, the appellant was transferred from Damcherra to Dharmanagar and he took his family along with him. On 15.02.2006 the wife left the matrimonial home along with the minor child without informing the appellant. He then went to his in-law's house and at the instance of the father of the wife, the wife came back and supported living with him.

04. Soon thereafter on 05.07.2006 when the husband had gone to meet his sister's husband who was unwell, his wife again left the matrimonial home without any rhyme or reason. Again the husband went

to his in-law's house and convinced the wife to rejoin his company. In this petition, it was alleged that lastly on 10.05.2007, when the appellant was in office, the wife along with the two minor children after taking Rs.6,000/- left the matrimonial home and went to the house of her parents and later she went to Agartala.

05. This petition for restitution of conjugal rights was contested by the wife and she denied all the allegations made by the husband and according to her, she had not deserted the husband but on 10.05.2007 the husband and his family members had demanded money from her and had virtually forced her to leave the matrimonial home.

06. The trial court after recording the evidence, decided the issue and held that on the two earlier occasions i.e. on 04.09.2006 and 10.09.2006 meetings were held in the presence of the families of both husband and wife and the husband admitted that he would not behave in a harsh manner with the wife in future. Further, the Judge deciding the RCR petition held that the respondent-wife had a valid ground to withdraw herself from the society of the husband-appellant.

07. The judgment in that case has attained finality and was not challenged by the husband in any proceedings. Thereafter, the husband filed another divorce petition. We could have appreciated if in the divorce petition the husband had made reference to certain facts which may have taken place after the dismissal of the RCR petition or to certain developments which were not a matter of dispute in the RCR petition. However, what we find from a careful perusal of the divorce petition is that exactly the same allegations have been made and there are no fresh allegations levelled. Even in the divorce petition, the last allegation of

desertion is of May 2007. The allegation with regard to the final act of desertion reads as follows:

"6. That, lastly on 10/05/2007 A.D. at about 11 a.m. when I was in official duty at Dharmanagar at that time my wife left our home along with our two sons and went to her father's house at Pekucherra without any reasonable grounds and during departure she told my parents that not to resist her and in the future she shall never come back at Laxminagar and she is withdrawing my society."

08. There is no other allegation. Once judicial proceedings with regard to the said allegations have ended, in which the learned court has given a finding that the wife had reasonable cause to leave the company of her husband and this finding having not been challenged by the husband, this finding acts as a *res judicata* against him and he cannot be permitted to reopen this finding in subsequent proceedings without pleading certain fresh facts of desertion.

In view of the above discussion, we are clearly of the view that the learned court below was fully justified in rejecting the petition for divorce. Accordingly, we find no merit in this appeal and the same is disposed of.

It is made clear that the husband shall continue to pay the alimony @ Rs.6,500/- (Rupees six thousand five hundred) only per month unless the same is varied in subsequent proceedings under Section 125 of the Cr.P.C. or any other provisions of law.

JUDGE

CHIEF JUSTICE

MB