

THE HIGH COURT OF TRIPURA
AGARTALA
F.A. 02 of 2013

Sri Swapan Kumar Barman,
S/O Lt. Aswini kumar Barman,
resident of Beltali, A.D. Nagar, Road No.10,
P.S.- West Agartala, Agartala, District- West Tripura.
.... **Appellant**

VERSUS

- 1. Smt.Shibani Barman (Das),**
W/O Sri Swapan kumar Barman,
D/O Lt. Brajendra Chandra Das,
resident of Ramnagar Road No.-4,
near Ramnagar Sporting Club, P.O.- Ramnagar,
P.S.- West Agartala, Agartala, District- West Tripura,
Pin- 799002.
- 2. Sri Sourav Barman,**
S/O Sri Swapan kumar Barman,
and Smt. Shibani Barman (Das),
resident of Ramnagar Road No.-4,
near Ramnagar Sporting Club, P.O.- Ramnagar,
P.S.- West Agartala, Agartala, District- West Tripura,
Pin- 799002.

.... **Respondents**

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

For the appellant : Ms. N. Guha, Advocate

For the respondents : Mr. DC Roy, Advocate

Date of hearing and : 18.02.2015.
delivery of judgment.

Whether fit for reporting : NO

JUDGMENT & ORDER(ORAL)

(S. Talapatra, J)

Heard Ms. N.Guha, learned counsel appearing for the appellant as
well as Mr. DC Roy, learned counsel appearing for the respondents.

2. The short question that has fallen for consideration of this court is that whether in absence of any order under Section 25(1) of the Hindu Marriage Act, 1955, any order under Section 25(2) of the Hindu Marriage Act, 1955 can validly be passed by the Court otherwise competent to pass such order.

3. There is no dispute that the respondent Smt. Shibani Barman (Das) did not institute any proceeding either under Section 125(1) Cr.P.C nor she had any occasion to file any application under Section 25(1) of the Hindu Marriage Act, 1955. Ms. N.Guha, learned counsel has however fairly submitted that by the order dated 18.09.1996 delivered in Civil Revision No. 35 of 1996 the appellant here-in, was to pay Rs.900/- per month to the respondent no. 1 during pendency of the case, where from the said Civil Revision No. 35 of 1996 had arisen. There was also direction for adjustment of the account.

4. Learned counsel appearing for the parties have fairly acceded that the order dated 18.09.1996 was passed under the discretionary jurisdiction. This Court has no hesitation to hold that there was neither any proceeding under Section 125 Cr.P.C nor under Section 25(1) of the Hindu Marriage Act, 1955 at any material time at the instance of the respondents.

5. Mr. DC Roy, learned counsel appearing for the respondents has strenuously argued that this court has duty and authority to look at the welfare of the respondents and to pass appropriate order for maintenance. In support of that Mr. Roy, learned counsel has relied on a decision in ***Ram Shanker Rastogi v.Smt. Vinay Rastogi*** reported in ***AIR 1991 Allahabad 255*** to contend that this Court has the jurisdiction to pass such

order or to maintain the impugned order. But, this Court finds that decision does not have any manner of application in the controversy before us. ***Ram Shanker Rastogi v. Smt. Vinay Rastogi*** deals with the issue that whether the order passed under Section 25(1) of the Hindu Marriage Act, 1955 could operate as res-judicata while passing any order under Section 25(2) of the Hindu Marriage Act, 1955. The answer has been rightly given by the Allahabad High Court that in view of the statutory provision paving the way for passing such further order in the change of the circumstances that cannot operate as res-judicata.

6. We are also not persuaded by the submission of Mr. Roy that this Court has wide power to pass any order granting maintenance or affirming the impugned order even in absence of any proceeding under Section 125(1) Cr.P.C or under Section 25(1) of the Hindu Marriage Act, 1955.

7. Having held so, the impugned order is interfered with and set aside. However, interference of the impugned order shall not create any impediment in the way of the respondents to claim adequate maintenance in the appropriate forum if they are aggrieved and eligible to the grant of maintenance or alimony. Accordingly, this appeal stands allowed.

8. On preparation of the decree send down the LCRs.

JUDGE

JUDGE

Saikat