

**THE HIGH COURT OF TRIPURA
AGARTALA**

MAT APP. 10 of 2011

Smt. Ratna Debnath,
W/O Sri Narayan Debnath,
D/O Sri Sunil Debnath,
resident of Durgabari, P.S.- Airport,
District- West Tripura.

... **Appellant.**

- **Versus** -

Sri Narayan Debnath,
S/O Sri Sunil Debnath,
resident of village- Kalibazar, P.O.- Bamutia,
P.S.- Lefunga, District- West Tripura.

... **Respondent**

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

For the appellant : Mr. R. Saha, Advocate.

For the respondent : Mr. DC Roy, Advocate

Date of hearing & delivery
of Judgment and Order : **25.02.2015.**

Whether fit for reporting : YES / NO

JUDGEMENT AND ORDER (ORAL)

(*Saha J*)

The instant appeal is preferred against the judgment and decree of divorce dated 17.11.2011 passed by the learned Judge, Family Court, Agartala, West Tripura in Title Suit (Divorce) 103 of 2010

2. Heard Mr. R.Saha, learned counsel appearing for the appellant wife as well as Mr. DC Roy, learned counsel appearing for the respondent husband.

3. We are not going into the detail facts of the case because of the decision which we propose to take.

4. We have gone through the evidences as well as the impugned judgment. On scrutiny of the records as well as on appreciating the submission made by the learned counsel for the parties, this Court finds that no effective opportunity was granted for cross-examination of PW-1 to PW-5. It further appears from their cross-examination that the Court has only noted after completion of the examination in chief ' Declined'.

5. We are shocked to observe the way the family Court has recorded the cross-examination. At this juncture, learned counsel for the appellant has submitted that the appellant has been seriously prejudiced for denial of the opportunity to cross examine. Therefore, it is apparent that without such opportunities granted to the appellant, the impugned judgment and decree has been passed. There are several judgments, as stated, where this High Court has rendered in unequivocal terms that the right to cross examine is a fundamental facet of the fair trial and component of natural justice. We are constrained to observe further that the way the cross-examination has been done and recorded by the court of the judge, Family Court is wholly unacceptable in terms of the doctrine of natural justice. Apart that, the way the documentary evidence has been introduced in the records has not been introduced following the proper procedure as the appellant did not have any opportunity of raising any objection against admissibility or relevance of the documentary evidence. These are material irregularities in the proceeding those have incapacitated the court to arrive at the correct finding on the fact. It is trite that fair procedure is a fundamental facet of the rule of law. Even though the Judge, Family court has the statutory right to

devise its own procedure but he cannot devise such procedure which is not in consonance with the principles of natural justice.

6. Hence, this Court has no hesitation to hold that the impugned judgment is liable to be set aside and accordingly the judgment and decree dated 17.11.2011 are set aside for the limited purpose of remanding the matter back for re-commencing the inquiry after affording opportunity of cross-examination to the appellant, respondent in the suit and to allow the appellant to raise any objection in regard to the admissibility or relevance of documentary evidence. Hence, this matter is remitted for fresh consideration in the manner, as directed above.

7. In the result, this appeal stands partly allowed to the extent as indicated above. Draw the decree accordingly. Send down the LCRs forthwith with a copy of this order.

8. The parties are directed to appear before the learned Judge, Family Court, Agartala, West Tripura on 02.04.2015. No further notice will be issued from the side of the learned Judge, Family Court, Agartala, West Tripura.

9. Before parting with the records, the learned Judge, Family Court, Agartala, West Tripura is directed to complete the entire proceeding within six months from the date of receipt of the case records along with a copy of this order.

JUDGE

JUDGE