

21.11.2022
SL No.1
Court No.8
(gc)

**FAT 285 of 2012
CAN 9956 of 2014
CAN 4 of 2020**

**Mousumi Das Nee Paul
Vs.
Sri Surajit Das & Anr.**

Mr. Nabankur Paul,
...for the Appellant.
Mr. Amarendra Chakraborty,
...for the Respondent No.1.

The matter was referred to Mediation. The learned Mediator has filed the report dated 9th September, 2022 which is stated below:-

FINAL REPORT OF THE MEDIATION

Parties mutually agreed that their marriage has broken down irrevocably and there is no chance of any reconciliation. Both the parties withdraw all allegations levelled against each other. For the purpose of entering into an amicable settlement and to move on with their own lives separately the appellant will withdraw the pending appeal.

As such, as per the direction given by the Hon'ble Court by order dated 22nd August, 2022 passed by the Hon'ble Justice Soumen Sen and the Hon'ble Justice Siddhartha Roy Chowdhury, the aforesaid matter is
Settled.

The learned Counsel for the appellant submits that the appellant is willing to settle the matter but the allegations made against her should be withdrawn and the decree needs to be set aside. It is stated that the appellant was not represented by an Advocate and she may not have understood the implication of her statement

as the withdrawal of the appeal would mean confirmation of the decree.

Although, we may not fully agree with the said submission made on behalf of the appellant, the fact remains that the ex parte decree is a nullity in view of the order passed by the learned Single Judge in C.O. No.2628 of 2008 dated 5th December, 2008 by which MAT Suit No.62 of 2008 was directed to be transferred from the Court of the learned District Judge of Uttar Dinajpur at Raiganj to the Court of the learned Additional District Judge at Siliguri. In view of the aforesaid order, the learned Trial Court could not have decided the said suit ex parte as the said Court became functus officio. It further appears from the order in C.O. No.2628 of 2008 that the respondent/husband did not appear in the said proceeding.

Be that as it may, we feel that this matter should be settled. The parties have agreed to file an application for mutual divorce before the learned Additional District Judge at Siliguri within three weeks from date and in the event any such application is filed, the learned Additional District Judge is directed to dispose of the said application for mutual divorce waiving cooling-off period in view of the judgment of the Hon'ble Supreme Court in ***Amardeep Singh Vs. Harveen Kaur*** reported at ***AIR 2017 SC 4417*** and Paragraph 27 of the judgment of the Hon'ble Supreme Court in ***Amit Kumar Vs. Suman Beniwal*** reported at ***2021 SCC Online 1270***.

The impugned order is set aside.

With the aforesaid observation, the appeal and the connected applications are, accordingly, disposed of.

The Registrar (L&OM) and the parties are directed to communicate this order to the learned Additional District Judge at Siliguri.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)