

THE HIGH COURT OF TRIPURA
AGARTALA

MAT APP. No.7 of 2009

Smt. Bibha Das,
W/o Sri Joydhan Sarkar,
D/o Sri Narayan Das,
resident of Vill. Bhadra Missip Para,
P.O. Tripura Engineering College,
P.S. Jirania, District West Tripura

..... Appellant

– Vs –

Sri Joydhan Sarkar,
S/o Sri Rasamoy Sarkar,
resident of Vill. Kalagachia,
P.O. Kalagachia Bazar,
P.S. Sidhai, Agartala, District West Tripura

.....Respondent

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

For the appellants	:	Mr. S. Deb, Sr. Advocate Mr. K.P. Bhowmik, Advocate
For the respondent	:	None
Date of hearing	:	24.09.2013
Date of judgment & order	:	30.09.2013
Whether fit for reporting	:	NO

JUDGMENT & ORDER

(*Talapatra J.*)

This is an appeal under Section 19(1) of the Family Courts Act, 1984, even though in the cause title the provision under which the appeal has

been filed, has been wrongly cited as filed under Section 28 of the Hindu Marriage Act, 1955, against the judgment and decree dated 04.07.2009, delivered in Title Suit (Divorce) No. 162/2008, dissolving the marriage between the parties so solemnised on 26th Baisakh, 1412 BS (corresponding to Gregorian year, 2005) as per Hindu rites and customs, satisfying the conditions as laid down in Section 5 of the Hindu Marriage Act, 1955.

2. Trouble started within few days of their marriage. The respondent has stated that he was treated with cruelty by the appellant by her conduct. The respondent was being treated disrespectfully. The respondent had sincerely wanted to reconstruct his marital relation, but the appellant had declared war against the respondent and she had filed a false criminal case against him under Section 498A of the IPC. The appellant has also made grave allegation that the respondent had been maintaining illicit relationship with his widow sister-in-law. Having been annoyed with the conduct of the appellant, the Pradhan of Kalagachia Gaon Panchayet had asked the appellant, whether she had any intention to live with the respondent in his house? The appellant had flatly refused to live with the respondent. In this backdrop, the respondent had filed a petition under Section 13 (1)(i) and (ia) of the Hindu Marriage Act, 1955 for dissolution of their marriage by a decree of divorce on the ground of adultery and cruelty.

3. The Judge, Family Court, Agartala, West Tripura, on appreciating the evidence as led by the parties, has held that the respondent is entitled to

get a decree of divorce on the ground of cruelty and accordingly, the decree has been granted.

4. Mr. S. Deb, learned senior counsel appearing for the appellant, has, at the outset, submitted that the respondent has contracted another marriage within two weeks from the day of passing the said decree of divorce, despite the fact that the appellant gave notice, communicating her intention of preferring an appeal against the said judgment and decree dated 04.07.2009 as passed by the Judge, Family Court, Agartala, West Tripura. Mr. Deb, learned senior counsel has candidly submitted that he has received instruction through the learned counsel on record that the appellant is no more interested to carry out the challenge against the impugned judgment and decree inasmuch even if she succeeds in the appeal, it will be impossible on her part to live with the respondent. Thus, the challenge against the impugned judgment and decree be treated abandoned. However, Mr. Deb, learned senior counsel has urged this court to make an appropriate order for permanent alimony or maintenance in terms of the provisions of Section 25 of the Hindu Marriage Act, 1955.

5. We have examined the records carefully including the impugned judgment and decree. It has surfaced that the respondent is a daily wager and he has no stable source of income as such. Even no maintenance was provided to the appellant under Section 24 of the Hindu Marriage Act, 1955 when the matter was in seison of the Judge, Family Court, Agartala, West Tripura. But, we are of the considered opinion that the appellant is entitled to permanent alimony or monthly maintenance in terms of the provisions of Section 25 of the

Hindu Marriage Act, 1955. As none appears for the respondent, we could not take benefit of the response as would have been made from the other side.

6. On considering the relevant factors including the income of the respondent, it is directed that the respondent shall pay a monthly sum of ₹1500 (rupees one thousand five hundred) to the appellant within 10th day of every English calendar month w.e.f. 01.10.2013 and the said sum be remitted to the appellant by Money Order. The cost of Money Order shall be borne by the respondent. Alternatively, the respondent may pay lump sum permanent alimony of ₹ 100000 (rupees one lac) within a period of 3(three) months from today. If the respondent is of the view that he would pay the lump sum permanent alimony, in that event only he may not pay the monthly maintenance as determined and directed by this court.

7. With this direction, this appeal is disposed of. There shall be no interference with the impugned judgment and order so far it is concerned with the dissolution of the marriage by the decree of divorce.

Prepare the decree accordingly.

Send down the LCRs forthwith.

JUDGE

CHIEF JUSTICE

ROY