

**IN THE HIGH COURT OF MEGHALAYA**  
**SHILLONG**

MAF No. 1 of 2015

Smti Kyntiew Akor Suchiang,  
C/o Office of the Principal  
District Institute of Education and  
Training Nongpoh,  
Ri-Bhoi District Meghalaya,  
R/o Ladthalaboh (Dongmihnsngi)  
Jowai, West Jaintia Hills.

... Appellant

-Versus-

Shri Woston Hynniewta,  
S/o Shri Shemphang Wanshong  
R/o Mawlai Umjaiur  
East Khasi Hills District, Meghalaya  
Or Senior Accountant (Cash Section)  
Office of Accountant General (A&E)  
Meghalaya, Shillong 793001.

... Respondent

**B E F O R E**

**THE HON'BLE MR JUSTICE SR SEN**

For the Petitioner

: Mr. S Jindal,  
Mr S Dey  
Ms QB Lamare  
Advocates

For the respondent

: Mr CH Mawlong,  
Advocate

Date of hearing

: 21.09.2015

Date of Judgment and Order

: 21.09.2015

**JUDGMENT AND ORDER(ORAL)**

Appellant's case in nut-shell is that;

“By this appeal under clause (d) of Rule 1 Order 43 of the Code of Civil Procedure, the Appellant herein has assailed the order dated 31-7-2015 passed by the L'd court of Judge District Council Court Shillong in Divorce Suit No. 45/2013,

by which order the Application dated 17-12-2014 filed by the Appellant under Order 9 Rule 13 CPC for setting aside the ex parte judgment and decree dated 26-9-2014 passed by the said court was rejected.

The Appellant and the Respondent herein are husband and wife and their marriage was solemnized according to Christians rights at Seventh Day Adventist Church, Jowai, Jaintia Hills District on 16-3-2000. The party belong to Khasi Panar Schedule Tribes of Meghalaya. Out of the said wedlock of the parties, two children were born viz; Miss Vanessa Grace Suchiang and Master Dajied Kyrpang Suchiang on 21-1-2007 and 31-3-2008 respectively. The Respondent husband is working as a Senior Accountant in the Cash Section of the Office of the Accountant General (A&E), Meghalaya, Shillong and he is drawing a monthly salary of Rs. 56,617.00.

The Respondent husband has extra marital relation and he right from 2009, intended to get rid of the Appellant wife and for that he has sent two application consecutively in the month of August 2009 and November 2009 for seeking divorce by mutual consent and the said applications were however not signed by the Appellant wife. Subsequently the Respondent husband filed a divorce suit No.22/2010 in the court of Judge District Council Court, Jowai and the Appellant wife entered appearance and contested the case by filing her show cause but subsequently the Respondent husband withdrew the said suit by order dated 19-3-2013 with a liberty to file a fresh suit.

After the withdrawal of the said divorce suit No.22/2010 vide order dated 19-3-2013, the Respondent husband again instituted a fresh divorce suit No.45/2013 in the court of Judge District Council Court Shillong for seeking divorce and dissolution of marriage under 10 (1) (x) of the Divorce Act, 1869 as amended by falsely alleging inter alia that the Appellant wife has falsely accused the Respondent

husband of having an extra marital relation and she has chased the Respondent husband from her house. The Appellant wife entered appearance in the case and filed her show cause and resisted vehemently the prayer of the Respondent husband for seeking divorce and dissolution of marriage on the aforesaid unfounded grounds and allegations. The appellant wife engaged Shri N. M. Mansuri, Advocate Shillong, practicing in Shillong Bar Association as her counsel and entrusted the contest of the case in his hand. But however, the Appellant was always keeping track over telephone and was occasionally meeting her counsel.

The L'd Counsel of the Appellant filed show cause and he also cross examined two witnesses of the Respondent husband and the matter was fixed on 12-8-2014 for cross examination of PW3 and on that day the L'd Counsel of the Appellant wife was found to be absent and for that reason the L'd court below passed the order dated 12-8-2014 that the case shall proceed ex parte against the Appellant. The order dated 12-8-2014 is bad in law as in absence of cross examination of PW3 the L'd court below would have close the cross examination and would have discharge the witness, but the L'd Court below was not entitled to order that the case shall proceed ex parte without affording any opportunity to the Appellant wife to adduce her evidence and evidence of other witnesses in support of her case.

Thereafter, an Application No. 698/2014 dated 11-9-2014 was filed by the Appellant wife to vacate the order dated 12-8-2014 and the said application was fixed for show cause and hearing on 19-9-2014 and on that day also the L'd Counsel of the Appellant was found to be absent and for that reason the L'd Court below rejected the said application No. 698/2014 and straight away posted the case for delivery of judgment on 26-9-2014 without affording any opportunity to the Counsel of either side to make submission on the

basis of their pleadings and cross examination of the Respondents witnesses. Thereafter, the L'd court below delivered the ex parte judgment and decree dated 26-9-2014 in absence of the parties.

The Appellant wife obtained the certified copy of the entire order sheet of the L'd Court below and on perusal of the same she came to know that the L'd Counsel appointed by her was not in a position to look after the interest of the Appellant and therefore, she decided to engage another lawyers, and they filed another application No. 971/14 under Order 9 Rule 13 for setting aside the ex parte judgment and decree dated 26-9-2014 as well as the order dated 12-8-2014. The Respondent opted not to file any show cause to the said Application and the application was heard on 15-7-2015 and by impugned order dated 31-7-2015 the said application filed under order 9 Rule 13 of CPC for setting aside the ex parte judgment and decree dated 26-9-2014 was rejected. Being aggrieved by the said order the Appellant has filed the instant Appeal under Order 43 Rule 1 of Code of Civil Procedure with a prayer to set aside the impugned order dated 31-7-2015 and consequent upon the setting aside of the order dated 31-7-2015, also set aside the ex parte judgment and decree dated 26-9-2014 and order dated 12-8-2014 passed in Divorce suit No. 45/2013.”

2. Heard Mr S Jindal, learned counsel for the appellant who submits that learned Judge, District Council Court, East Khasi Hills District, has passed an ex-parte judgment in Divorce Suit No.45 of 2013 on 26.09.2014.

3. Being aggrieved by the said judgment, appellant approached the learned Court of the District Council, for vacating the ex-parte judgment but the same was rejected vide order dated 31.07.2015.

4. Being aggrieved by the order dated 31.07.2015, appellant approached this Court. Learned counsel submits that the learned District Council Court passed the impugned judgment and order without hearing the parties. He prayed that necessary order may be passed.

5. On the other hand, Mr CH Mawlong, learned counsel for the respondent submits that the Court has fairly recorded the reason for rejecting the petition for vacating the ex-parte judgment and order dated 26.09.2014. So appeal may be dismissed.

6. After hearing the submission advanced by the learned counsel for the parties and after going through the ex-parte judgment dated 26.09.2014 as well as impugned order dated 31.07.2015, it can be seen that in the order dated 31.07.2015, the Court observed that respondent was mostly not present personally before the Court on the date fixed. Therefore, she has no right to blame the lawyer. Learned Court also came to the conclusion that due to the negligent attitude of the respondent, lawyers were helpless.

7. After considering the impugned orders and the submissions advanced by the learned counsel for the parties, I am of the view that it is apparent from the order that before taking up the issue the Court has not taken any steps to reconcile the matter between the parties which is mandatory in nature. It is the duty of the Court to try to reconcile and save the family and not to just grant divorce. Besides that, in my view, ex-parte judgment is not a good judgment. Therefore I am of the further opinion that it is a fit case to remand back the case to the learned Court of the District Council for fresh trial, by first adopting reconciliation

method and after it failed then to proceed with the trial in accordance with law.

8. Accordingly, the matter is remanded back to the District Council Court, Shillong. Impugned order dated 26.09.2014 and impugned order dated 31.07.2015 are hereby set aside. The case is restored back to the stage from where it started moving ex-parte. However, before proceeding further reconciliation method is to be adopted.

9. Learned counsel for the appellant also raised the question of jurisdiction, that, I leave to the court of the District Council to decide after hearing the learned counsel for the parties in accordance with law.

10. With these observations, this appeal is allowed to that extent and is accordingly disposed of.

11. Registry is directed to forward a copy of this order to the District Council Court, Shillong, immediately.

JUDGE

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