THE HIGH COURT OF TRIPURA
A G A R T A L A

MATRIMONIAL APPEAL NO.08 OF 2016

Shri Dipankar Biswas,
S/O. Late Dilip Biswas,
Resident of Ramnagar Road No.4,
P.O. – Ramnagar, P.S – West Agartala,
District – West Tripura,
Pin - 799002.

.... **Husband Appellant**

-: Versus :-

Smti. Panchali Das (Biswas),
W/O. Sri Dipankar Biswas,
D/O. Sri Pradip Ranjan Das,
Resident of Town Gobindapur (North),
P.O. & P.S. – Kailashahar,
District – Unakoti, Tripura.

..... **Wife Respondent**

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

Counsel for the appellant	:	Mr. A.K. Bhowmik, Sr. Advocate, Mr. R. Datta, Advocate.
Counsel for the respondent	:	Mr. D.K. Biswas, Advocate. Mr. G.K. Nama, Advocate.
Date of hearing	:	03-05-2017.
Date of Judgment & Order	:	30.05.2017.

JUDGMENT & ORDER

This appeal is directed against the order dated 31-3-2016 passed by the learned Judge, Family Court, Kailasahar in Title Suit (Nullity) No. 1 of 2015 dissolving the marriage between the appellant and the respondent on compromise.

2. The facts of the case, which are relevant for disposal of this appeal, may be briefly noted at the outset. The respondent had filed an application U/s 12(1)(C) of the Hindu Marriage Act, 1955 for annulling the marriage between her and the appellant and for directing the appellant to return the

presents, materials, articles and valuables to her as per the list appended to the schedule to the application to her. On 21-9-2015, the appellant had engaged one Swarup Bhattacharjee as his counsel to conduct his case and instructed him to pray for time by submitting a medical certificate. It, however, transpired that no such appearance on his behalf was recorded in the order sheet for the day. On the contrary, one Supriya Debroy had appeared on his behalf as the Court appointed legal aid counsel on his behalf. The next date of appearance was fixed for 17-10-2015. As he was absent, the trial court on 17-10-2015 directed that the case would proceed against the appellant *ex-parte* as no step was taken by the legal aid counsel; the case was thereafter fixed for PW examination on 7-12-2015. On 7-12-2015, the respondent submitted her examination-in-chief and that of her witness (PW-2) by affidavit. On that day, the appellant appeared before the trial court through his legal aid counsel with a medical certificate to the effect that the appellant had undergone renal allograft on 17-8-2015 and that he would regain fitness on 1-1-2016 and prayed for setting aside the *ex-parte* order dated 17-10-2015 by allowing him to file his written statement. The trial court, however, by the order dated 7-12-2015 vacated the *ex-parte* order only to the extent of allowing him to cross-examine the respondent on the next date on payment of Rs.1,500/- as cost and at the same time rejected his prayer for filing his written statement. The trial court then fixed 12-1-2016 for payment of cost and cross-examination of PWs.

3. On 12-1-2016, the respondent filed an application under Order VI, Rule 17 CPC for amending the application, and the trial court after hearing both the parties allowed the prayer for amendment. By this amendment, the respondent, without changing the pleading, added the prayer for dissolving their marriage by a decree of divorce. On the same day, a reconciliation process was initiated whereafter the trial court held that both the parties had arrived at an amicable settlement of the case for dissolving the marriage by a decree of divorce in accordance with the joint petition filed by them

purportedly under Order XXIII, Rule 3 CPC and fixed 8-2-2016 for order. On 2-2-2016, the appellant filed an application for cancellation of the joint petition dated 12-1-2016, for setting aside the *ex-parte* order, allow him to file his written statement and allow him to defend his case with a new counsel, one Ashim Bhattacharjee. The trial court then fixed 27-2-2016 for filing of written objection by the respondent, which was duly done by her whereupon it fixed 22-3-2016 for hearing. After hearing the parties, the trial court passed the impugned order accepted the purported compromise and dissolved the marriage by a decree of divorce. It is against this order that this appeal is preferred by the appellant.

4. Mr. AK Bhowmik, the learned senior counsel for the appellant, contends that the trial court acted illegally in acting upon the said compromise petition, which was later on disowned by the appellant; in the face of challenge made to the compromise by the appellant, the trial court ought not to have passed the decree as prayer for by the respondent. It is his contention that unless there is complete agreement between the parties for dissolution of marriage and unless court is completely satisfied in respect thereof, it cannot grant a decree for divorce by mutual consent. Once the appellant unilaterally withdrew his consent by filing the appropriate application as in this case, the trial court ought not to have granted the divorce decree; this alone is sufficient to set aside the impugned decree. He strongly relies on the decision of the Apex Court in ***Hitesh Bhatnagar v. Deepa Bhatnagar, (2011) 5 SCC 234*** to fortify his submission. It is also the submission of the learned senior counsel that the trial court committed illegality in refusing to accept the written statement filed by the appellant by overlooking the condition of the appellant who is a patient of serious renal disorder thereby making him handicapped in effectively contesting the application for dissolution of marriage. Contending that the impugned judgment suffers from various infirmities, he prays for setting aside the impugned order, quash the ex-parte proceeding against the appellant, allow

him to file his written statement and contest the application on merit. The impugned order is, however, strongly defended by Mr. D.K. Biswas, the learned counsel for the respondent, who maintains that the compromise was arrived at by the parties with their eyes wide open knowing fully well all the implications of such compromise on the basis of the reconciliation made at the initiative of the Trial Court, more so, when no case of its unlawfulness or fraud is made out by the appellant. He, therefore, strenuously urges this Court to dismiss the appeal, which has absolutely no merit.

5. Order XXIII, Rule 3 CPC is in the following terms:

> **"3. Compromise of suit**.— Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, [in writing and signed by the parties] or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit]:
>
> [Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]
>
> *Explanation.*— An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule."

6. Thus, Rule 3 of Order XXIII provides that (a) where the court is satisfied that a suit has been adjusted wholly or in part by any lawful agreement in writing and signed by the parties; or (b) where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter

of the suit, the court shall record such agreement, compromise or satisfaction and pass a compromise decree accordingly. In other words, for invoking Rule 3 of Order XXIII, the following conditions must be fulfilled:

(i) There must be an agreement or compromise;
(ii) It must be in writing and signed by the parties;
(iii) It must be lawful;
(iv) It must be recorded by the court; and
(v) A compromise decree must have been passed by the court.

7. The proviso further provides that where one party alleges adjustment or settlement of the suit and the other party denies it, the court shall decide the question. The Explanation declares that a void or voidable agreement or compromise shall not be deemed lawful.

8. In the instant case, a joint application submitted by the appellant and the respondent before the trial court on 12-1-2016 wherein they agreed to dissolve their marriage by a decree of divorce and that the materials and goods listed in the schedule to the original petition should be returned to the respondent through the court within 30 days. However, on 2-2-2016, the appellant filed an application before the trial court for cancellation of the said joint petition filed by him and the respondent vaguely stating that "[B]ut the respondent put his signature on the petition dated 12-01-2016 without giving the contexts at the petition which was filed jointly.]"

9. The learned Judge, Family Court rejected the application for cancellation of the compromise and granted the decree of divorce after accepting the compromise petition. The reasonings of the learned Judge can be best understood by reproducing the relevant paragraph of the impugned judgment, which reads:

> "Perused the petition dated 02-02-2016 of respondent wherein the respondent does not dispute the fact that the respondent put his signature on the petition but only mentions

> that he put his signature without giving context at the petition which was filed jointly. There is no quarrel that the compromise petition was signed by the parties with due identification by their respective counsel, as such, it is not understandable that the counsel of the defendant/respondent will not explain the terms of the compromise to the defendant/respondent. It is evident therefrom that petition was jointly filed on 12-01-2016 is an admission by him but the words 'without giving the context' at the petition bear practically no intelligibility, so there is no scope now for either party to resile from the context of the said compromise petition and Court is also required to give effect to said petition filed on consensus towards the disposal for the suit according to law."

10. In our considered view, the learned Judge does not commit any illegality in the view taken by him. It is not the case of the appellant that the suit has not been adjusted by lawful agreement or compromise in writing or signed by the parties or the respondent has not satisfied the appellant in respect of the subject matter wholly or partly; no such pleading was made by the appellant in his written objection. The proviso to Rule 3 of Order XXIII plainly states that either of the party should deny that an adjustment or satisfaction has not been arrived at upon which only the court has to decide the existence or non-existence of any adjustment or satisfaction. Once the parties have arrived at a compromise, it should be accepted unless the compromise is illegal or fraudulent or is not duly signed by the party questioning the compromise. In this case, the joint compromise petition was duly signed and filed by both the appellant and the respondent on 12-1-2016 with their eyes wide open and knowing fully the contents thereof; the written objection was, however, filed by the appellant only on 2-2-2016, i.e. some 21 days later. As already noticed, it is never alleged by the appellant that the compromise petition suffers from any of the infirmities recognized in Rule 3 of Order XXIII upon the proof of any of such infirmities alone that the compromise petition could be annulled by the court. In our judgment, the

learned Judge has correctly rejected the prayer for cancellation of the compromise petition.

11. In so far as the decision in ***Hitesh Bhatnagar case*** (*supra*) cited by the learned senior counsel for the appellant is concerned, what cannot be overlooked is that that was a case in which the decree of divorce was sought to be obtained by mutual consent U/s 13-B(1) & (2) of the Hindu Marriage Act, 1955. When one of the spouses unilaterally withdrew his consent before the passing of the decree, the trial court dismissed the application for divorce on mutual consent, which decision was upheld by the High Court and the Apex Court. However, the instant case is not one filed under Section 13-B(1) & (2), but is one under Order XXIII, Rule 3 CPC, which operates in a different field. This makes all the difference. No other contention survives in the view that we have taken.

12. The offshoot of the foregoing discussion is that there is no merit in this appeal, which is hereby dismissed. Let the decree of divorce be prepared accordingly. No costs. Transmit the LC record forthwith.

JUDGE **CHIEF JUSTICE**