

**HIGH COURT OF TRIPURA
AGARTALA**

MAT APP 9 OF 2014

For the Appellant(s) : Mr. Samar Das, Advocate.

For the respondent(s) : Mr. P. Majumder, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. SANJAY KAROL
HON'BLE MR.JUSTICE ARINDAM LODH**

27/02/2019

The petitioner-husband lays challenge to the judgment and decree dated 28.03.2014, passed in TS (DIV) 287 of 2009 whereby petition for divorce preferred under the provisions of Section 13 of the Hindu Marriage Act, 1955 stands dismissed.

(2) After the matter was heard for some time, learned counsel for the parties jointly prayed that the impugned judgment and decree be quashed and set aside for the reason that principles of natural justice stood violated by the Presiding Officer, Family Court, Agartala, West Tripura inasmuch as no effective adequate opportunity of cross-examining the respective witnesses was afforded to either of the parties, resulting into serious miscarriage of justice.

(3) We notice that on account of lack of proper representation and advice, the parties were not able to cross examine the witnesses for in a stereo type manner, the cross examination part of testimonies of all the witnesses simply records the statement to be "*it is not a fact that I deposed false*".

(4) The Presiding Officer, in our considered view ought to have been more sensitive and attentive in complying with the procedure, as also the law laid down by this Court, ensuring

complete and substantial justice, rather than concentrating on the disposal of the matter.

(5) Be that as it may, for the reason that the procedure adopted by the Presiding Officer has resulted into miscarriage of justice, we quash and set aside the impugned judgment and decree and remand the matter back for adjudication afresh, on the following mutually agreed terms and conditions:

- (a) Impugned judgment and decree dated 28.03.2014, passed by the learned Judge, Family Court, Agartala, West Tripura in TS (DIV) 287 of 2009, titled as *Sri Kajal Modak Vrs. Smt. Jaba Modak*, is quashed and set aside.
- (b) The matter is remanded back to the Presiding Officer, Family Court, Agartala, West Tripura where the parties undertake to appear on **19.03.2019**.
- (c) Considering the facts and circumstances of the case, we allow parties to be represented through the counsel of their choice.
- (d) The Family Court shall fix a date when the witnesses shall appear for fresh examination/recording of the statements of the witnesses.
- (e) The parties shall produce the witnesses at their own costs and responsibility.
- (f) For leading evidence, not more than three opportunities shall be afforded to either of the parties by the Family Court.

- (g) Parties undertake not to take any unnecessary adjournments.
- (h) Hearing be expedited.
- (i) It shall be open for the Presiding Officer to pass appropriate orders in the event of any default.
- (j) All issues on merit of the matter are left open.

The appeal stands disposed of.

(ARINDAM LODH), J

(SANJAY KAROL), CJ.

