

**HIGH COURT OF TRIPURA
AGARTALA**

Mat.App. 15 of 2023

Smt. Debalina Choudhury, Age 35 years,
W/o- Anup Kumar Banda, Village- Hatipara, PO- Salbagan,
PS- Airport, District- West Tripura, PIN: 799012

---The Appellant(s)

Versus

Sri Anup Kumar Banda, 39 years.
S/o- Sri Nepal Chandr Banda,
Resident of North Joynagar,
PO: Arabinda Welfare Society,
PS: West Agartala, District- West Tripura, PIN: 799001

--- The Respondent (s)

For Appellant (s)	:	Mr. P Roy Barman, Sr. Advocate. Mr. S. Bhattacharjee, Advocate. Mr. K. Nath, Advocate.
For Respondent(s)	:	Mr. S. Talapatra, Advocate.
Date of hearing	:	06.11.2024
Date of pronouncement	:	20.11.2024
Whether fit for reporting	:	No

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Judgment & Order

(T. Amarnath Goud, J)

This is an appeal under Section 19(1) of the Family Courts Act, 1984, read with Section 28 of the Hindu Marriage Act, 1955 against the Judgment dated 04.09.2023 and decree dated 11.09.2023 passed by the learned Family Court, Agartala, West Tripura in Case No.T.S(Divorce) 409 of 2020.

[2] The fact leading to this case in brief is that the marriage of the appellant was solemnized with the respondent, on 07.07.2014 as per Hindu rites and Customs after observing all necessary formalities of Hindu Marriage. After marriage they started to live together as husband and wife. On 14th July, 2014 the appellant and respondent returned from their matrimonial home and started to live together as husband and wife peacefully and due to their lawful wedlock a female child was born on 31.08.2015 at ILS hospital, Agartala. It is stated that after marriage the respondent and his parents has observed that

the appellant is in the habit of visiting her parent's house frequently and sometimes without any intimation to the respondent and his parents. Subsequently, as per request of the appellant, the respondent had to shift his residence from his parents in a rented house from 3rd February, 2016 at Joynagar where also the appellant without any intimation used to visit her parent's house frequently and in some occasions she stayed there for 6/7 days without consent of the respondent. On 27th April, 2016 the appellant again went to her father's house at Shalbagan to attend a marriage party of the friend of the respondent and the respondent also attended the said marriage. After attending the marriage party the appellant had gone to her father's house as their daughter was with her mother and the respondent came alone in their rented house. On the next date i.e. on 28th April, 2016 the respondent went to Shalbagan to bring his wife and daughter but the appellant did not come with the respondent and told the respondent that she will be coming within 2/3 days. Thereafter the respondent and his well wishers requested the appellant as well as her parents to send the appellant to the house of the respondent but in spite of such request: the appellant did not return back to the house of the respondent. Thereafter, several requests were made by the petitioner and his well wishers to come and live together but appellant refused. On 27th April, 2016 the respondent personally visited and requested the appellant to come to his house and the appellant also assured the respondent that she will be coming very soon. But in spite of that assurance the appellant did not come.

[3] Subsequently, a suit being TS(RCR) 49 of 2016 was filed before the court of the Judge, Family Court, Agartala, West Tripura and the learned court by the order dated 14.11.2019 below after dealing with the case has observed in the following manner:

“In view of the aforesaid observation both the parties are hereby directed to restore their conjugal life within one month from the date of obtaining the copy of decree, Accordingly, the instant case is hereby disposed of on contest but no order as to cost.”

[4] Having aggrieved by the order dated 14.11.2019 of the Judge, Family Court, Agartala, West Tripura the respondent herein has approached before Court of Judge, Family Court, Agartala, West Tripura where the learned court below has observed by the order dated 04.09.2023 passed in TS(Divorce) 409 of 2020 in the following manner:

“In the result, the petitioner-husband Sri Anup Kumar Banda has successfully established the case of the different types of cruelty including desertion for granting decree of divorce against the respondent-wife Smt. Debolina Chowdhury and so the prayer of the petitioner under Section 13(1)(ia) & 13(1)A(ii) of the Hindu Marriage Act, 1955 is allowed. There shall be no marital bonding between petitioner husband Anup Kumar Banda and respondent-wife Smt. Debolina Chowdhury from today i.e. from 4th September, 2023 and hence the marriage is dissolved in between them.”

[5] Aggrieved by the said order 04.09.2023, the appellant-wife has approached before this court for seeking the following relief(s):

- (i) *Admit the Appeal filed under section 9(1) of the Family Court Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955*
- (ii) *Issue notice upon the respondent*
- (iii) *Call for the record of case No. TS (Divorce) 409/2020 from the file of the Ld, Judge, Family Court, Agartala, West Tripura.*
- (iv) *After hearing both the parties, the Hon'ble High Court may set and aside the judgment and Decree, dated 04.09.2023 passed by the Ld. Family court, Agartala, West Tripura in TS(Divorce) 409/2020;*
- (v) *Pass any other order/orders as may be considered fit and proper by the Hon'ble High Court.*

[6] It is contended by the senior counsel for the appellant that the learned court below has held the appellant is guilty of mental cruelty on the ground that the appellant compelled the respondent to shift to rented house after their marriage. In arriving such perverse finding, the learned court below failed to take into consideration the evidence on record, more particularly the cross examination of DW 2, father of the appellant, wherefrom it is very clear beyond any doubt that rented house was taken by the respondent despite the objection given by the appellant. The learned court below failed to consider the Judgment, dated, 14.11.2019, passed in T.S (RCR) 49/ 2016 and in the said Judgment, the learned court below has given a specific finding that, it is the respondent,

i.e. the Appellant herein, who has been always willing to resume conjugal life and it is the respondent herein, who has been unwilling to resume conjugal life.

[7] It is further contended by learned senior counsel for the appellant that learned Family Court gave much reliance on PW 3, as PW 3 is the independent witness. But failed to consider that PW 3 is not independent witness and evidence of the PW 3 is not reliable because he is an hearsay evidence, as in the cross examination, PW 3 has admitted that he has come to know the facts of the case from the Petitioner i.e., the Respondent herein.

[8] Moreover, the learned court below has relied on the evidence which was beyond pleading. In the petition for divorce, the respondent did not make any averment or contention as to the fact, that, the PW 3 is related to the matrimonial dispute of the appellant and respondent. Moreso, the respondent, i.e., PW I admitted, in his cross that he has not mentioned the name of Shyamal Chowhan in his examination-in-chief by way of affidavit.

[9] To support his case, Mr. P Roy Barman, learned senior counsel has relied upon a judgment of the apex court in *Anurag Mittal vs Shaily Mishra Mittal* reported in (2018) 9 SCC 691 where the apex court has observed in the following manner:

“27. Section 15 of the Act provides that it shall be lawful for either party to marry again after dissolution of a marriage if there is no right of appeal against the decree. A second marriage by either party shall be lawful only after dismissal of an appeal against the decree of divorce, if filed. If there is no right of appeal, the decree of divorce remains final and that either party to the marriage is free to marry again. In case an appeal is presented, any marriage before dismissal of the appeal shall not be lawful. The object of the provision is to provide protection to the person who has filed an appeal against the decree of dissolution of marriage and to ensure that the said appeal is not frustrated. The purpose of Section 15 of the Act is to avert complications that would arise due to a second marriage during the pendency of the appeal, in case the decree of dissolution of marriage is reversed. The protection that is afforded by Section 15 is primarily to a person who is contesting the decree of divorce.”

[10] On the contrary, Mr S. Talapatra, learned counsel appearing for the respondent has contended before this Court that the impugned order dated 04.09.2023 is just and proper and does not need any interference from this Court. He further submitted

that the respondent husband did try his best to lead a conjugal life with the appellant-wife by bring her back to his matrimonial home but it was the appellant who did not let it happen. To support his submission, learned counsel for the respondent relied on a judgment of the apex court in Special Leave Petition (C) No.10751 of 2021 (*Arunoday Singh vs Lee Anne Elton*) passed by the Supreme Court of India as relied by the counsel for the respondent which reads as follows:

16. However, as observed above, Section 19(3) of the Family Courts Act requires every appeal from a judgment or order of the Family Court to be filed within 90 days. The provisions of the Family Court Act have effect notwithstanding anything inconsistent contained in any other law for the time being in force.

17.....

8. By reason of the non-obstante provision of Section 20 of the Family Courts Act giving overriding effect of the Family Court Act, the period of limitation for filing an appeal from a judgment and order of a Family Court constituted under the Family Courts Act would be 30 days and not 90 days. The High Court thus found that the Appeal was delayed, even though the appeal was filed well within 90 days.

[11] Reliance has also been placed on another judgment of the apex court in *Krishnaveni Rai vs Pankaj Rai & Anr* reported in 2020 0 AIR (SC) 1156 where the apex court has followed in the following manner:

“31. Section 15 clarifies that when a marriage has been dissolved by a decree of divorce, and there is no right of appeal against the decree, or if there is such a right of appeal, the time for appealing has expired without an appeal having been preferred, or an appeal has been presented but the same has been dismissed, it shall be lawful for either party to the marriage to marry again. Had it been the legislative intent that a marriage during the pendency of an appeal should be declared void, Section 11 would expressly have provided so”.

[12] Learned counsel for the respondent has finally prayed before this court to dismiss the appeal by confirming the impugned order dated 04.09.2023 by the learned court below.

[13] When this court put a question before the learned senior counsel for the appellant that what measures the appellant has taken to lead a conjugal life in pursuant to the order dated 14.11.2019 passed in TS(RCR) 49 of 2016 by the learned court below. To which it was contended that the appellant wife went to the house of the respondent husband to live with him but her in-laws did not allow her to enter into their home. It is

seen from record that the husband has filed one suit for restitution of conjugal rights being Title Suit (RCR) 49 of 2016 and the same was decreed on 14.11.2019. Since the appellant wife did not join the respondent husband even after it was directed that they should restore their conjugal life within one month from the date of obtaining the copy of decree. Thereafter, a suit for divorce was filed by the respondent-husband herein. The appellant-wife in the pleadings has not given any satisfactory reason for not joining the husband and what steps she has taken to reunite with her husband in pursuant to the order dated 14.11.2019. The averments made by the appellant-wife stating that she was concerned towards her family reputation. Further, she did not take the support or did not disclose about the trouble being faced by her to join the husband and her family members of the husband and not allowing her to enter into the house cannot be believed. It is strange to learn that she has also not informed the local police for compliance of the judgment dated 14.11.2019 of the learned court below. She has also not informed the matter to her neighbourhood nor to any relative. A mere letter of January, 2020 of the wife addressing the husband asking him to allow her to join is the solitary document which has no evidentiary value. From a bare perusal of the judgment and decree dated 14.11.2019, it is reasonably presumed that both parties need to comply with the said order. Thus, it was the duty of the appellant-wife to go and join marital home of her husband.

[14] It is argued by the counsel for the respondent that date of judgment of the divorce petition is 04.09.2023 and the limitation for approaching before the high court according to the Supreme Court of India is within 30 days of passing such judgment by the learned court below. But as the notification dated 27.09.2023 of the High Court of Tripura, such limitation extends to 90 days which is inconsistent with the law of land.

[15] This court is of the view that filing of the instant appeal by the appellant-wife herein against the divorce decree was not known to the respondent-husband and by

the time, the respondent learnt about the said appeal, the respondent-husband got married for the second time on 05.12.2023 and the same was registered on 08.12.2023. As per *Arunoday Singh (supra)* the presenting of the instant appeal where the marriage has already taken place, the appeal does not hold water and it cannot be declared as void. Moreover, this court is of the view that the judgment as relied upon by learned senior counsel for the appellant is not relevant to the case in hand.

[16] Apart from the legal issue, taking a pragmatic view in the matter as the issue involved where the respondent husband first got married to the appellant and gave birth to a child namely Antariksha Banda who is a minor and on 05.12.2024, the respondent got married for the second time and is leading a family life, it would not be appropriate, at this juncture, for the appellant-wife to join the respondent-husband to allow her to live as husband and wife.

[17] In view of the above scenario, this court feels that the appellant has not made out a case with regard to the compliance of the order dated 14.11.2019 passed in TS(RCR) 49 of 2016 and the appellant has also prayed for dismissal of the divorce decree. Since the husband got married for the second time and staying elsewhere with his new family, the appellant cannot join the husband as the husband is not also willing to take back the appellant as his wife at this juncture in view of the changed circumstances.

[18] It surfaces from the record that the appellant-wife being a working woman has not made any demand for permanent alimony or maintenance. It is further seen from the record that an amount of Rs.2500/- was fixed towards maintenance payable to the minor daughter per month as per order dated 19.12.2018 by the learned court below. It is the case of the appellant-wife even the said maintenance has not been paid for quite long time by the respondent-husband.

[19] Having considered the future of the minor daughter of the appellant and the respondent, this court awards one time settlement of Rs.7,50,000/- to be paid by the

respondent in favour of the minor daughter, including the arrears of maintenance which fell due till today. The entire arrears amount along with the sum of one time settlement award of Rs.7,50,000/- shall be paid by the respondent–husband within three months from today.

[20] In the corollary, this court, for the reasons stated above, is not inclined to interfere with the appeal and accordingly the appeal is dismissed confirming the order dated 04.09.2023 passed by the Court of Judge, Family Court, Agartala, West Tripura in case No.T.S.(Div) 409 of 2020.

[21] With the above observation, the appeal stands dismissed and disposed of. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed. Send back the LCRs forthwith.

B.Palit, J

T. Amarnath Goud, J

