GAHC010154052021

2026:GAU-AS:16599-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Mat.App./26/2021

VERSUS

Advocate for the Petitioner : MR. R MAZUMDAR, MR S SARMAH,MR. S HAZARIKA,MR B KAUSHIK,MR. U SARMA,MR H BEZBARUA

Advocate for the Respondent : MR. M MAHANTA , MR. U K BARMA,MS. S MAHANTA

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved : 03.11.2026
Date of pronouncement of judgment : 12.11.2026
Whether the pronouncement is of the operative part of the judgment ? : N/A
Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

(Sanjeev Kumar Sharma, J)

1. Heard Mr. B. Kaushik, learned counsel for the appellant. Also heard Mr. M. Mahanta, learned counsel for the respondent.

2. This appeal is directed against the impugned Judgment & Decree dated 24.03.2021 passed by the Principal Judge, Family Court, Nalbari in F.C.(Case) No. 131 of 2019 (Titile : Sri Abani Das vs. Smti. Suravi Das) dismissing the suit filed by the present appellant for a decree of Judicial Separation.

The facts leading to the present appeal may be briefly stated:-

3. The marriage between the appellant and the respondent/wife was solemnized on 14.05.2012, out of which a male child was born on 09.09.2013. In the year 2015, the appellant/husband had instituted T.S. (M) No. 22/2015 before the District Judge, Nalbari seeking dissolution of the marriage by way of decree of divorce on the ground of mental cruelty which was contested by the respondent/wife by filing written statement. The said suit came to be dismissed by Judgment & Order dated 17.2.2017 passed by the said Court. Aggrieved, the appellant had approached the High Court by way of MAT Appeal No. 74 of 2017 which also came to be dismissed on 19.07.2018.

4. Undeterred, the appellant instituted F.C. Case (Civil) No. 131 of 2019 before the Principal Judge, Family Court, Nalbari, this time seeking judicial separation from the respondent/wife under Section 10 (i), (i)(b) of the Hindu Marriage Act, 1955. The said suit also came to be dismissed by the present impugned judgment and order passed by the learned Principal Judge, Family Court, Nalbari. Hence, this appeal.

5. It would be pertinent to mention herein that in the meantime, upon being approached by the respondent wife, the learned Chief Judicial Magistrate, Nalbari by Order dated 26.11.2017 passed a residence order in favor of the respondent/wife as well as compensation of Rs. 50,000/- on account of mental torture and the said order has not been put to challenge. Since then, the respondent/wife has been staying in the house of the appellant/husband occupying two rooms therein, as submitted by learned counsel. Further to that, during the pendency of F.C. (Civil) Case No. 131 of 209, the respondent wife had filed an application under Section 24 of the Hindu Marriage Act praying for maintenance pendente lite and cost of proceedings and the learned Court directed the appellant/husband to pay an amount of Rs. 5,000/- as cost of the proceedings and Rs. 1,500/- per month as household expenses with effect from 21.12.2019.

6. Section 10 (1) of the Hindu Marriage Act provides as follows:

> "*Judicial Separation. - (1) Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition praying for a decree of judicial separation on any of the grounds specified in sub-section (1) of section 13 and in the case of a wife on any of the grounds on which a petition for divorce might have been presented.*"

7. The appellant had instituted the suit for judicial separation which is the subject matter of the present appeal on the ground of cruelty and desertion which are the very same grounds on which he had earlier instituted the suit for divorce i.e., T.S. (M) No. 22 of 2015 which fact is not disputed. The said suit for divorce on the same grounds having been dismissed by the learned Trial Court and the appeal thereon also having been dismissed by the High Court, the grounds on which the appellant/husband could have instituted the subsequent suit for judicial separation must therefore be based on fresh cause of action arising after the dismissal of the suit for divorce. This is so as the findings of the learned trial court in the divorce suit on the grounds of cruelty and desertion, as affirmed by the High Court in respect of the then existing cause of action are binding on the parties. Consequently, what requires consideration is whether the grounds raised or facts adverted to in the appellant's application for judicial separation pertain to fresh causes of

action. A perusal of the application for judicial separation filed by the appellant/husband which was registered as F.C. Case (Civil) No. 131 of 2019 would show that the appellant/husband had taken as many as 29 grounds therein in order to justify the allegations of cruelty and desertion, but out of the said 29 grounds, save for one i.e., ground number XXVIII, the appellant has failed to state as to whether the cause of action in respect of the said grounds had arisen before or after the filing/dismissal of the divorce proceedings in T.S. (M) No. 22 of 2015. Even during the course of arguments, learned counsel appearing for the appellant/husband could not state anything in this regard. As far as ground number XXVIII is concerned, the same may be reproduced hereunder:-

> *"xxviii. That, after rejection of the divorce petition filed by the petitioner the Opp. party started to behave more rudely to the petitioner use to state that as petitioner filed divorce so the petitioner now cannot stay with the Opp. party and thereby compelled the petitioner to stay away from the Opp. party since 31-05-2015."*

8. It is also stated in the aforesaid application that the cause of action arose from 17.02.2017 i.e., the date of the order of rejection of the divorce petition in T.S.(M) Case No. 22 of 2015.

9. Since the appellant/husband had failed to state the time of the cause of action in respect of grounds number I to XXVII and XXIX, the said grounds are

not available for consideration. Moreover, the pleadings in the previous divorce suit i.e., T.S.(M) No. 22 of 2015 have not been annexed to the instant appeal, although the Judgment dated 17.02.2017 rendered in the said application has been so annexed. A perusal of the said judgment reflecting the contentions of the appellant therein i.e., the present appellant/husband indicates substantially the same grounds that have been taken in the subsequent application for judicial separation. Even with regard to some of the grounds taken in the subsequent application for judicial separation, it appears that they would be barred by the principles of constructive *res judicata* as the said grounds could have been taken in the divorce suit as they pertain to the period prior to the filing of the divorce suit.

10. As far as the ground number XXVIII is concerned, what has been stated therein is that the respondent/wife started behaving more rudely with the appellant/husband after the dismissal of the divorce suit instituted by him. This implies that earlier also the respondent/wife used to behave rudely with the appellant/husband and it is only the intensity of such rudeness that has increased, but at the same time, the same is a bald allegation and devoid of any material particulars as to the nature and manner of such rudeness exhibited by the respondent/wife towards the appellant/husband and therefore, cannot be held to be sufficient to establish the ground of cruelty. Further, a perusal of the

evidence adduced by the appellant/husband before the learned Trial Court also displays similar deficiencies.

11. In course of his arguments, learned counsel for the appellant/husband has sought to also make out a case of irretrievable breakdown of marriage. But, it is the settled law that this Court cannot grant a decree of divorce or of judicial separation on any grounds, other than those mentioned in Section 10 and Section 13 of the Hindu Marriage Act. The power to dissolve a marriage on the ground of irretrievable breakdown of the marriage is available only to the Hon'ble Supreme Court while exercising powers under Section 142 of the Constitution of India.

12. Although, the learned counsel for the appellant/husband has placed before the Court a number of judgments of the Hon'ble Apex Court as well as those of other High Courts, none of them help the petitioner in overcoming the lacunae in the pleadings and evidence of the appellant/husband, as far as the present case is concerned and therefore, this Court does not deem it necessary to burden this judgment by a discussion of the said precedents. For the same reason, this Court refrains from discussing the decisions relied upon by learned counsel for the respondent.

13. In view of what has been discussed above, we find the present appeal to be devoid of merit and accordingly, the same stands dismissed.

14. Send back the TCR.

JUDGE **JUDGE**

Comparing Assistant