



## **J U D G M E N T**

- 1.** This is an application u/s 27 (1) (d) of the Special Marriage Act, 1954 for dissolution of marriage by decree of divorce.
- 2.** The contention of the petitioner is that both the petitioner and respondent were husband and wife and petitioner is a Islam and Respondent is Hindu by religion. Marriage between the petitioner and respondent was solemnized on 27-01-2003 as per the provisions of the Special Marriage Act, 1954 and a marriage certificate to that effect being Marriage Certificate No. 10/2003 dated 27-01-2003 was obtained from the Office of District Marriage Officer, Sonitpur, Tezpur.
- 3.** After the solemnization of marriage petitioner and respondent resided at a rented house at Barika Chuburi, Tezpur and thus their marriage was consummated.
- 4.** However, it is stated that after marriage the respondent has been treating the petitioner with cruelty like using foul and filthy language and respondent also assaulted the petitioner physically like kicking, slapping and dealing fist blows etc without any rhyme or reason.
- 5.** It is also alleged that the respondent is 8 (eight) years older than the petitioner and soon after marriage respondent always behave badly to the petitioner but the petitioner always remained calm and somehow maintained the family relation with the respondent and the respondent never used to do any household work and want to live her life as her own.
- 6.** It is further pleaded that from 16-05-2004 the respondent refused to cohabit and maintain any physical relation with the petitioner without any rhyme or reason. Respondent also started to show different attitude and unsocial behavior towards the petitioner husband and continued physical and mental cruelty towards the petitioner and when the petitioner tried to interfere to pacify the situation the respondent often hit the petitioner and respondent never hesitated to do such kind of heinous act against the petitioner.
- 7.** It is also alleged that respondent on 07-10-2010 threatened petitioner that one day she will kill the petitioner with poison and do bodily harm to the

petitioner. Respondent has that attitude only to torment the petitioner so that the petitioner could not live in peace. But, after all these the petitioner tolerated all such unusual behavior and attitude of the respondent in the hope that she will change in course of time and they will live their conjugal life in peace and happiness. But, unfortunately, the harsh and rude behavior and attitude of the respondent towards petitioner did not change and it turned bad to worse day by day. Despite best efforts, immense persuasions and innumerable attempt by the petitioner, the respondent refused to share bed with the petitioner and to lead a peaceful and happy conjugal life with the petitioner.

**8.** The respondent does not allow the relatives and friends of the petitioner to visit him or to be visited by himself, if the petitioner does so, the respondent quarrels with the petitioner. The ill treatment of cruelty by the respondent has reached at such stage that the petitioner is not in a position to continue his marital life and therefore he is living separately from the respondent under the same roof for more than 10 (ten) years and as such there is no physical relation between the parties and they have no issues also and thus the petitioner is deprived from the pride and pleasure of the paternity without any fault on his part.

**9.** The relation of the petitioner and respondent had crossed the point of no return and whole relationship is already dead and no point of dragging the dead relationship of both parties and as such the petitioner has been compelled to file the present petition to free himself from the cruel act of the respondent.

**10.** Receiving the notice the respondent entered her appearance in Court through her learned counsel and filed her written objection stating inter alia that the proceeding is not maintainable in law and fact as there is no cause of action and the respondent denied all the allegations made by the petitioner in his petition as wholly false and concocted.

**11.** It is contended that petitioner is Islam and respondent is Hindu by religion and after marriage with the petitioner she had to convert her religion into Islam at the behest of the petitioner and she had to adopt Islam as her religion in the hope of a happy and harmonious married life and that is why the respondent has adopted her Islamic name of Meherun Nessa as mentioned in the petition filed by petitioner.

**12.** The respondent denied the allegation of the petitioner in paragraph 5 of his petition as the respondent never treated the petitioner with any kind of cruelty and the petitioner falsely made imaginary and concocted allegations against the respondent.

**13.** The respondent denied the allegation of the petitioner in paragraph 5 of his petition as factually incorrect and vague. However, the respondent admits that she is about 5 years older than the petitioner but not 8 years older than the petitioner and this fact was already known to the petitioner before and at the time of marriage. Respondent always behaved normally, fondly and in a friendly manner to the petitioner as because their marriage was a result of a long standing love affair between them. She alleged that the petitioner started to show his reluctance to continue the marital relation with the respondent in a normal way and it is the respondent who did all the household work.

**14.** It is contended that respondent never refused to cohabit and never voluntarily refrained from physical relation with the petitioner. On the other hand, it is the petitioner who showed indifferent attitude and lack of interest in the respondent after 6 (six) years of marriage. Respondent totally denied the averments contained in para 7 of petition as false and baseless. She stated that their physical relation and co-habitation continued till the 3<sup>rd</sup> week of December 2016 i.e. till the date she received the summon/ notice of the present suit.

**15.** It is further pleaded that respondent never showed any unsocial behavior to the petitioner nor committed any physical or mental cruelty and she did not ever shout at or scold the petitioner by means of any foul, filthy and derogatory language to the petitioner. The respondent never hit the petitioner in any manner but it is the petitioner who often used such foul and filthy language to the respondent and he also took resort to physical assault and for these respondent had to file a criminal case against the petitioner vide GR Case No. 594/10 u/s 498 (A) of IPC. However, later on, the parties compromised and started living together. Therefore, the respondent had exonerated the petitioner from the charges leveled against him in the interest of continuation of their conjugal life happily as she had no other place to go back or no other relatives because of her marriage with a Islam man and conversion of her religion from Hindu to Islam.

**16.** Respondent denied the averments made by the petitioner in Para 9 of the petition which are all false and concocted. The respondent never threatened the petitioner on 07-10-2010 or any date to kill him with poison. On the other hand, taking advantage of his physical strength the petitioner used to always dominate and suppress the respondent in all manner so much so that the petitioner even restricted her personal freedom of speech and free movement to a great extent.

**17.** Respondent denied the averments made by the petitioner in Para 10 and 11 of the petition which are all false and concocted. The petitioner made her best efforts to adjust and spent a happy and successful married life with the petitioner but the petitioner failed to reciprocate with the respondent in building a harmonious relationship because the petitioner always had that feeling that the respondent is older than him and she belongs to another caste and for these reasons the petitioner always nurtured an illegitimate desire of marrying another woman of younger age and of the same caste as of him. The petitioner often showed reluctance to co-habit with the respondent and even if the petitioner had co-habited with the respondent he used to adopt all the birth controlling measures that could be adopted by a male during their private moments of physical relation.

**18.** Respondent denied the averments made by the petitioner in Para 12, 13, 14 and 15 of the petition which are all false and concocted. The respondent had never subjected the petitioner to physical or mental cruelty. The respondent used to receive threat from petitioner whenever any of her friends and family visit her house because the respondent is cut off from her own kith and kin and her past well wishers after her intercommunity marriage with the petitioner. So, the respondent always tried her best to mix, mingle and adjust with the relatives and friends of the petitioner as her own relatives and friends.

**19.** It is contended that petitioner is not a daily wager by occupation, he is employed in a paper mill at a monthly salary of Rs. 10,000/-. The marriage between them is still alive and shall live to its natural end. The present suit is filed by the petitioner with the only and malafide intention of marrying another woman. In such a situation the relation between the petitioner and respondent has broken down irretrievably. However, the respondent contended that if the

divorce is granted on the ground alleged by the petitioner it will tantamount to giving indulgence to the petitioner to obtain decree of divorce without sufficient grounds. All the allegations made by petitioner are preposterous, hypothetical and speculative assertions which are totally denied by the respondent. It is contended that the suit is not filed by petitioner on bonafide ground rather it is vitiated with malafide intention of marrying another woman. Therefore, it is prayed that the divorce petition be dismissed with exemplary cost.

**20.** During the course of trial, the petitioner adduced evidence of three witnesses who were duly cross examined by the learned counsel appearing for the respondent. Likewise, the respondent has also submitted evidence of two defence witnesses who were duly cross-examined by the learned counsel appearing for the petitioner.

**21.** Based on the pleadings of the parties, the following issues were formulated:

- I. Whether the respondent had treated the petitioner with cruelty during their married life as alleged ?
- II. Whether the petitioner/ plaintiff is entitled for decree of divorce as against the respondent dissolving their marriage on the ground of cruelty ?
- III. To what relief/ reliefs parties are entitled to ?

#### **Discussions, Decisions and Reasons thereof :**

**22.** In this context it is to be noted that even though the case filed by petitioner was hotly contested by the wife as respondent and submitted evidence on affidavit by both sides and witnesses were also duly cross-examined by the learned lawyers appearing for both sides but at the end of the day, the parties have mutually agreed to pass a decree of divorce on mutual consent instead of on contest. Therefore, both the parties have filed a joint petition No. 1713/2021 stating inter alia that though initially petition was filed u/s 27 (1) (d) of the Special Marriage Act, 1954 but, today they seek to convert the said petition into a petition u/s 28 of Special Marriage Act, 1954 with a prayer to grant divorce by mutual consent stating that they are no longer

interested to proceed further in the case because of the situation which made them no longer possible to live a conjugal life together and therefore sought a decree of divorce on mutual consent.

**23.** The respondent (wife) however, arduously contended that it was the petitioner (husband) who made her life miserable by consistently neglecting her and indulging in extra-marital relationship with another woman putting her in fix. Therefore, in order to get rid of her husband and untold miseries she had suffered at the hands of her husband she agreed to a divorce from her husband on condition that her husband is to pay sufficient and reasonable amount of permanent alimony to her as a measure of full and final settlement for the rest of her life. As such, they have filed the petition No. 1713/2021 u/s 28 of Special Marriage Act, 1954 for seeking appropriate relief.

**24.** Section 28 of Special Marriage Act, 1954 which reads as under:

**"28. Divorce by mutual consent.—(1)** *Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court by both the parties together on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.*

*(2) 3 [On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months] after the said date, if the petition is not withdrawn in the meantime, the district court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act, and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of the decree."*

**25.** Situated thus, the petition u/s 27(1)(d) of Special Marriage Act, 1954 is hereby converted to petition u/s 28 of Special Marriage Act, 1954.

**26.** Now, on consideration of the facts of the present case, particularly, keeping in mind the fact that the petitioner/husband put his wife in great

embracement by parting with her for the rest of her life by way of dissolution of marriage pushing the life of the respondent in great uncertainties, this court deem it appropriate that the respondent deserve to get sufficient permanent alimony from her husband to carry on the rest period of her life. She had to handle her life singlehandedly without care and protection. So, in order to have some sort of security and support she needs some financial relief to ameliorate her miseries. Counsel for Respondent contended that the petitioner is an employee in paper mill earning Rs. 10,000/- per month. He has also other source of income which is however denied by the petitioner.

**27.** Be that as it may, law has cast an obligation on the husband to maintain his wife commensurate with his income and status in the society. The husband cannot simply avoid this responsibility by merely denying his lack of income. It is settled position of law that an able bodied person always bears the potential to earn money by doing even physical work. Therefore, the husband cannot escaped from this onerous responsibility of maintaining his wife even after getting the decree of divorce who is going to leave his wife in wilderness for the rest of her life. There is nothing to show that the petitioner husband is not able to earn money. In this context, it is to be noted that respondent had filed a Misc.(J) Case No. 1/2018 u/s 36 of Special Marriage Act, 1954 for grant of maintenance/alimony pendente-lite and accordingly, after hearing the parties on 01-06-2019 an order has been passed directing the husband to pay a lump sum amount of Rs. 20,000/- to the wife pending final disposal of the T.S. (M) Case No. 130/2016.

**28.** Therefore, considering all the essential facts into account and keeping in mind the existing income of the petitioner (husband) and the increasing requirement of the respondent (wife) and keeping in mind the ever escalating price rise of every commodities and to provide the respondent (wife) an opportunity to lead a modest life commensurate with the income of her husband, this Court deem it appropriate to grant Rs. 3,00,000/- (Rupees Three Lakhs) only as permanent alimony which in the considered estimation of this Court is deem to be justified in the given circumstances of the case.

**29.** In view of the finding of this Court, the marriage between the petitioner and respondent performed on 27-01-2003 as per Special Marriage Act, 1954 is

dissolved by a decree of dissolution of marriage and the Marriage Certificate No. 10 dated 27-01-2003 issued by Marriage Officer, Sonitpur, Assam stands cancelled as of having no effect from today.

**30.** Prepare the decree accordingly.

**31.** The Judgment is digitally signed and delivered in the Open Court on this **17<sup>th</sup> day of November, 2021** and all concerned will act on it accordingly.

**(C.B.Gogoi)**  
**District Judge,**  
**Sonitpur::Tezpur.**

**Dictated and corrected by me.**

**(C.B.Gogoi)**  
**District Judge,**  
**Sonitpur, Tezpur.**

**APPENDIX****Petitioner's Witnesses.**

1. PW 1 - Md. Abdul Munnaf.
2. PW 2 - Md. Abdul Salim.
3. PW 3 - Md. Nazim Ahmed.

**Respondent's Witnesses**

1. DW 1 - Dipali Dey @ Meherun Nessa.
2. DW 2 - Md. Nazrul Islam @ Luit.

**EXHIBITS**

Exhibit A Series - Certified copies of the FIR lodged in Tezpur PS being Tezpur Case No. 303/2010 by Respondent Dipali Dey

Exhibit B - Deposition dated 16-07-2012 deposed by the respondent Dipali Dey in connection with GR Case No. 594/2010.

**(C.B.Gogoi)**  
**District Judge,**  
**Sonitpur::Tezpur.**