

Assam Schedule VII. Form No.132.

HIGH COURT FORM NO. (J).2.

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE.

DISTRICT : GOLAGHAT.

IN THE COURT OF THE DISTRICT JUDGE AT GOLAGHAT.

PRESENT : SRI T. LOHAR,

DISTRICT JUDGE, GOLAGHAT.

Monday, the 11th day of November, 2013.

Title Suit (M) No. 39/2011.

Smti. Lija Kakoty @

Rin Kakoty. Petitioner.

-Vs-

Sri Sanat Kr. Dutta. Respondent/O.P.

This suit coming on for final hearing on 8th day of November, 2013 in presence of :-

Mr. D.P. Joiswal,

Advocate, Golaghat for the petitioner,

AND

Mr. T. Ali,

Advocate, Golaghat for the respondent.

and having stood for consideration to this day, the Court delivered the following Judgment and Order :-

JUDGMENT & ORDER :

1. Smti. Lija Kakoty @ Rin Kakoty, wife of Sri Sanat Kr. Dutta, daughter of Late Premadhar Kakoty, resident of Betioni Kakoty gaon, P.S. & District Golaghat, Assam (hereinafter called as the petitioner) filed an application u/s 13(1)(i)(i-a) (i-b) of the Hindu Marriage Act, 1955 as amended in 1976 against Sri Sanat Kr. Dutta, son of Sri Thanuram Dutta, resident of Gurujugania, P.O. Ganakpukhuri, district Golaghat (hereinafter called as respondent) praying for dissolution of marriage by a decree of divorce.

2. The petitioner has stated in her petition that her marriage with respondent was solemnized on 21.4.2007 according to Hindu rites and customs at the residence of her parental home. The petitioner is an unemployed graduate and presently studying for Master degree course as a private candidate and the respondent is a permanent employee, working at Numaligarh Refinery Ltd., Numoligarh as Laboratory Analyst (Chemist) drawing his salary of Rs.40,000/- per month. After the marriage, the petitioner entered into the house of the respondent with a colourful dream, but her dream shattered while she came across with the fact that the respondent has a mental disease. On the very first night, the petitioner observed unusual behaviour of the respondent. The nephew of the respondent also abused the petitioner for not bringing the ornaments with her which were given at the time of "Zoron". On each and every night, the respondent avoided the physical relationship with the petitioner. On the night of 25.4.2007, the respondent told the petitioner that there would be no children from him in future due to impotency of the respondent, the respondent did not co-operate with the petitioner and as a result, the petitioner became frustrated. The respondent left the petitioner at the house situated at the village and started to stay at the quarter of his elder brother at Golaghat. On 2.6.2007, the respondent on the pretext of touring Shillong, took her to consult with the Dr. M. Shyam at GNRC, Guwahati and while she was on the way, she came to know that the said Doctor is a Psychiatrist and that the respondent has been taking treatment with the said Doctor since 2005. The said Doctor was angry with the respondent as to why he got married. The petitioner told the entire matter to the family members of both

the families. Then both the family members assembled on 28.7.2007 and in their presence, it was decided to break and a deed of agreement was executed between the parties and the petitioner started to live at her parent's residence. As per said agreement, both the petitioner and the respondent consented for mutual divorce as per clause (d) of the said agreement and the respondent agreed to provide maintenance to the petitioner till she got remarried. But the respondent failed to do so. Therefore, the petitioner has to approach this Court for a decree of divorce. On 31.12.2008, the petitioner filed a Misc. case bearing No. 121/2008 against the respondent for seeking her maintenance and accordingly, the then learned Judicial Magistrate, First Class, Golaghat passed the order on 4.6.2011 after full trial, directing the respondent to pay the amount of Rs.8,000/- per month to the petitioner. Against the said order, the respondent filed a revision petition vide Criminal Revision No. 11/2011 before this Court. That both the parties have been living separately since 28.7.2007 till the date of presentation of the petition and there has been no scope for resumption of cohabitation between the petitioner and the respondent. Therefore, she filed the instant case.

3. The respondent contested the case by submitting written statement, wherein, he denied all the allegations levelled against him by the petitioner in her petition and prays for dismissal of the petition of the petitioner.

4. Upon hearing from both the sides and after perusal of the pleadings of both the parties, the following issues are framed to decide the case.

ISSUES :

- (1) Whether there is any cause of action for filing the suit ?
- (2) Whether after solemnization of the marriage between the parties, the O.P./respondent treated the petitioner with cruelty ?
- (3) Whether the O.P./respondent deserted the petitioner for a continuous period of not less than 2 years immediately preceding the presentation of the petition ?

- (4) Whether there is an agreement between the petitioner and the O.P./respondent executed on 28.7.2007 ?
- (5) Whether the petitioner is entitled to get a decree of divorce as prayed for ?
- (6) What other relief/reliefs, the parties are entitled to ?

5. The petitioner adduced the affidavit evidence of 3 witnesses and exhibited two documents, namely – certified-to-be-true copy of judgment and order dated 4.6.2011 passed by the learned Judicial Magistrate, First Class, Golaghat in Misc. case No. 121/08 and Mutual Agreement dated 28.7.2007 of the parties. The respondent did not adduce any evidence

6. On 8.5.2013, both the parties, jointly submitted a petition u/s 13(b) of the Hindu Marriage Act, 1955 praying for a decree of divorce on mutual consent. For the disposal of the said petition, a mandatory period of 6 months are to be required as per provisions of Sub-section 2 of Section 13(b) of the Hindu Marriage Act and accordingly, the next date was fixed on 8.11.2013. On 8.11.2013, the learned counsels of both the parties has submitted that as both the petitioner and the respondent have been living separately since the year of 2007 and there is no chance of reconciliation and hence, praying for disposal of the case as per provisions of Section 13(b) of the Hindu Marriage Act.

7. Perused the petition No. 243/13, dated 8.5.2013. On perusal of the said petition, we find that the petitioner has not abandoned her maintenance, as well as her permanent alimony. As per Section 25 of the Hindu Marriage Act, for seeking permanent alimony and maintenance, the petition from the side of the petitioner is requires. That the petition can be entertained at the time of passing any decree or at any time subsequent thereon. Since 6 months elapsed from the date of filing of the mutual petition u/s 13(b) of the Hindu Marriage Act by the parties, but the said petition has not been withdrawn. Hence, accept the same.

8. Marriage between the parties is dissolved by mutual consent.

9. Prepare the decree accordingly.

Given under my hand and seal of the Court on this the 11th
day of November, 2013.

(T. Lohar),
DISTRICT JUDGE,
GOLAGHAT.

Dictated & corrected
by me.

(T. Lohar),
DISTRICT JUDGE,
GOLAGHAT.

Dictation taken & transcribed
by me :- S. Borpatra, Steno.