

COURT OF THE DISTRICT JUDGE
NORTH TRIPURA : DHARMANAGAR.

TITLE SUIT(RCR) 0000003 OF 2015

Petitioner

Sri Himendu Sinha
son of Sri Himangshu Sekhar Sinha
of Kadamtala Road : Nayapara
Dharmanagar : North Tripura District

By Advocate

Mr. R. Bhattacharjee
Smt. Rupali Nag

Respondent

Smt. Sagarika Dhar
wife of Sri Himendu Sinha
daughter of late Gouranga Dhar
of West Chandrapur : Dharmanagar.

By advocate

Mr. A. Chakraborty

PRESENT

Sri S. G. Chattopadhyay
District Judge
North Tripura: Dharmanagar.

Date of institution: 17-04-2015

Date of argument: 12-01-2016

Date of Judgment: 12-01-2016

JUDGEMENT AND ORDER

[1] This petition has been filed by Sri Himendu Sinha against his wife Smt. Sagarika Dhar under section 9 of the Hindu Marriage Act, 1955, seeking restitution of conjugal rights on the ground that his respondent wife has withdrawn from his society without reasonable excuse.

[2] Brief facts, relevant for disposal of the case, are that the petitioner and the respondent was married on 20-07-2010 as per Hindu customs. They happily lived together for a couple of months. Thereafter, matrimonial differences developed between the spouses. The respondent wife was found reluctant in discharging her matrimonial obligations. She was inclined to live separately along with her husband away from his parents. But the petitioner did not agree to her proposal to live away from his parents leaving his old and ailing parents at home. A brother of the respondent used to live

in Delhi. On that pretext, his respondent wife also wanted to visit Delhi. Under compelling circumstances the petitioner also accompanied his wife to Delhi. On 22-12-2013 they returned back to Dharmanagar because the respondent became pregnant. A son was born to them who was named Hardic. After the son was born the respondent again wanted to visit Delhi. He did not agree to accompany her. The respondent thereafter left her matrimonial home and started living with her parents. The petitioner met his wife several times to bring her back but she did not agree. Several meetings were held to reconcile their differences but those efforts did not work. It is pleaded by the petitioner that his respondent wife has withdrawn herself from his society without any reasonable excuse and therefore she needs to be compelled for restitution of conjugal rights.

[3] His petition was presented in this court on 17-04-2015 and the case was registered. Having received notice, the respondent wife has appeared and filed her written statement. I have taken efforts for reconciliation of their differences. But such effort did not work.

[4] The respondent wife has denied the allegations of her petitioner husband that she left her matrimonial home to get rid of her matrimonial obligations. It is pleaded by her that both of them had gone together to Delhi for job and she helped her husband to get a job in Delhi. He left the job and came back to Dharmanagar on the ground that there was none to look after his parents. It is further pleaded by the respondent that she has also managed a job in Delhi and there being no job opportunity at Dharmanagar she will lose her livelihood if she comes back to Dharmanagar. She contends that when she left Dharmanagar along with her petitioner husband it was assured by her husband that they would settle in Delhi. With her earnest efforts the respondent managed job for both of them but her husband left his job without any valid reason. Contention of the respondent is that she needs financial support for the upbringing of her child and therefore she is unable to return to Dharmanagar leaving her job. She has therefore sought for dismissal of the petition.

[5] In view of the pleadings of the parties, I have framed the following issues in the suit.

- (i) Whether the suit is maintainable in its present form and nature.
- (ii) Whether the respondent wife has withdrawn herself from the society of the petitioner without reasonable excuse.
- (iii) Whether the petitioner is entitled to a decree of restitution of conjugal rights.

[6] In order to prove his case the petitioner has examined himself as PW-1. Her respondent wife has also examined herself as OPW-1. Neither side has adduced any documentary evidence on their behalf.

[7] I have heard Mr. R. Bhattacharjee, Ld. Advocate appearing along with Smt. Rupali Nag for the petitioner and Mr. A. Chakraborty, Ld. Advocate appearing for the respondent. I have also gone through the oral evidence adduced by the parties. Mr. R. Bhattacharjee, Ld. Counsel appearing for the petitioner submits that the petitioner has been able to prove that the respondent has withdrawn herself from his society without any reasonable excuse and as such he is entitled to a decree of restitution of conjugal rights.

[8] As against the submissions of Ld. Counsel appearing for the petitioner, Mr. A. Chakraborty, Ld. Counsel representing the respondent wife submits that the petitioner has failed to prove his case against his wife. According to Ld. Counsel the respondent wife has been able to prove that she is living in Delhi on valid grounds and she has never withdrawn herself from the society of her husband. Ld. Counsel therefore urges for dismissal of the petition.

[9] All the issues are tied up together for decision. As indicated above, the petitioner has alleged that his wife has withdrawn herself from his society without reasonable excuse and therefore he has filed this petition under section 9 of the Hindu Marriage Act, 1955 seeking restitution of conjugal rights. The allegations made by the petitioner constitute the ground for seeking relief under section 9 of the Hindu Marriage Act. Moreover none of the parties has been able to bring forth any material for the court to hold that the suit is not maintainable in the form in which it is presented before the court. As such the first issue regarding maintainability is decided in favour of the petitioner.

[10] In so far as the second and third issue are concerned, the respondent has categorically told the court in her evidence that she is very much willing to live with her husband if he comes to Delhi and starts a business. It is not denied by the petitioner that he is jobless having no income at all and his respondent wife on the other hand is doing a job and upbringing their son with her hard earned money. It is not also denied by the petitioner during cross examination of the respondent that she arranged for a training of her petitioner husband in Delhi so that he could have earned and settled in Delhi. It is not also denied by the petitioner that both of them started living in Delhi and when his wife managed a job he left Delhi for Dharmanagar. The petitioner has categorically told the court that the only reason behind her living in Delhi is to earn money for upbringing her son.

[11] In view of what is discussed hereinabove, it cannot be said that the respondent has withdrawn herself from the society of her husband. She still desires the company of her husband and she wants to live with him along with their only son in Delhi. It appears to me that she is living in Delhi under compelling circumstances. In my considered view, the respondent has successfully discharged her burden under the explanation to section 9 of the Hindu Marriage Act by proving that she has been living in Delhi on reasonable grounds.

[12] The respondent is an educated woman and she has managed a job in Delhi. She is upbringing her son with her hard earned money. In these circumstances, I cannot compel her to come back to her husband for restitution of conjugal rights.

[13] Resultantly, the petition of Himendu Sinha stands dismissed and the case is disposed off on contest. The parties shall bear their own costs.

A N N O U N C E D

Typed to my dictation
and corrected by me.

(SRI S. G. CHATTOPADHYAY)
DISTRICT JUDGE.
NORTH TRIPURA : DHARMANAGAR

(SRI S. G. CHATTOPADHYAY)
DISTRICT JUDGE.
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