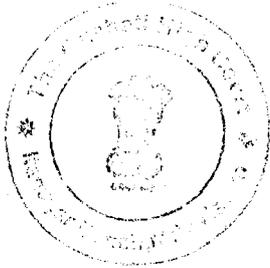


**IN THE GAUHATI HIGH COURT**  
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

**ITANAGAR PERMANENT BENCH**

**CRP No. 30 (AP) of 2011**



**PETITIONER:**

Dr. Tarik Talom,  
S/o. Late T. Talom,  
Permanent resident of Jomo Village,  
P.O. & P.S. - Rumgong, District - West Siang,  
Arunachal Pradesh.

**By Advocates :**

Mr. P Taffo,  
Ms. N Danggen,  
Mr. T Gyadi,  
Mr. T Topu,  
Ms. J Doji  
Mr. S Lingfa.

- Versus -

**RESPONDENT :**

Smti. Yaben Mize,  
W/O. Dr. T. Talom,  
Permanent resident of Village Rumgong,  
P.O. & P.S. - Rumgong, District - West Siang,  
Arunachal Pradesh.

**By Advocates :**

Mr. M Pertin, *senior Advocate*  
Mr. T Leriak,  
Mr. K Dabi,  
Mr. C Gongo,  
Mr. J Dulom

BEFORE

**THE HON'BLE MR. JUSTICE M. R. PATHAK**

Date of Judgment: 7<sup>th</sup> of June, 2017.

**JUDGMENT (CAV)**

Heard Ms. Nikita Danggen, learned counsel for the petitioner. Also heard Mr. Muk Pertin, learned senior counsel assisted by Mr. Karyom Dabi, learned counsel for the sole respondent.

2. The petitioner herein is the husband of the sole respondent. This revision petition is against the impugned order 12.07.2011 passed by learned Additional Deputy Commissioner, Rumgong, West Siang District, Arunachal Pradesh in Case No. RMG/JK-20/2010-11/371 by which the learned Commissioner passed an order for execution of a *Keba* decision dated 14.07.2002 on the ground that the said order never sent for execution by the Court of the first instance, the *Keba* itself and therefore, submitted that the impugned order dated 12.7.2011 being devoid of any jurisdiction, since the said decision of the *Keba* dated 14.07.2002 is partly an order under Section 125 of the Code of Criminal Procedure, partly an adjudication of breach of contract and partly an execution of said *Keba* order itself.

3. The brief facts of the case is that both the petitioner and the sole respondent got married in June 1993 and out of their wedlock, a daughter and a son were born to them. In the year 2001, their marital relation deteriorated due to alleged extra marital affairs of the petitioner with another lady and therefore the petitioner on 23.09.2001 executed deed of agreement/declaration before the learned Judicial Magistrate First Class, Along in presence of four witnesses, wherein the petitioner himself stated that said declaration was made by him without any kind of pressure and in his fresh and sound mind, declaring the following claims:-



- i) The 75% of his salary that he gained from his service would be directly handed over to his wife, Mrs. Yaben Talom (Mije) (the respondent herein).
- ii) The RCC building that was under construction on his allotted land under Order No.WS/Rev/19/2000 will be in the name of his wife Mrs. Yaben Talom (Mije).
- iii) The WRC field at Roing area that he purchased from one Sri Tajir Mije shall be left in the name of his wife Mrs. Yaben Talom (Mije).
- iv) The pharmacies at Along and kaying shall be under the proprietorship of his wife Mrs. Yaben Talom (Mije).
- v) The Siang Vocational Institute at Along and Roing shall also be left in the name of his wife Mrs. Yaben Talom (Mije).
- vi) The Trading License bearing the name of M/S. Aina Enterprises at New Market, Along shall also be left in the name of his wife Mrs. Yaben Talom (Mije).
- vii) He promised not to commit any such kind of misbehave and evil activities to his wife again in his future.

The said deed of agreement/declaration of the petitioner dated 23.09.2001 was duly countersigned by the learned JMFV, Along on 23.09.2001 itself in presence of the witnesses.

4. But said deed of agreement between him and the respondent did not include their marital relation and a *Keba* was held on 04.07.2002 between the petitioner and the respondent wherein it was found that the petitioner, despite having his wife, the sole respondent herein, married another Bori lady though he executed a deed of agreement/declaration and in spite of the said agreement dated 23.09.2001, the petitioner declared before the *Keba* that he would marry the said lady and since the petitioner was adamant to marry the said Bori lady, the *Keba* on 04.07.2012 came to the finding that the respondent herein is entitled to receive and retain what was given to her by the said agreement dated 23.09.2001 and that

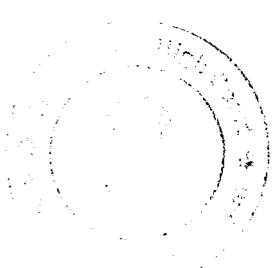
- (i) 75% of salary of the petitioner
- (ii) the RCC building of the petitioner to be transferred to her and
- (iii) four numbers of trading license in her favour.

The said *Keba* dated 04.07.2002 further held that irrespective of whether the respondent and the petitioner continues their conjugal life or not, the sole respondent shall live with their two children in a separate house and the petitioner shall pay 75% of his salary for their upkeep.

5. However, it is stated by the petitioner that since 2003, both the children of the petitioner and respondent started living with him and it is he, who became responsible for their maintenance and since then the petitioner have stopped giving 75% of his salary to his wife, the sole respondent. But he submitted that she continued to receive rent from the pharmacies and Trading License as per the agreement and that she started living in one of the house of the petitioner against his objection.

6. The respondent on 21.02.2011, filed a complaint before the Court of learned Additional Deputy Commissioner, Rungong, against the petitioner for non-compliance of the *Keba* decision dated 04.07.2002 and for violation of the terms and conditions of the deed of agreement/declaration dated 23.09.2001 by selling the WRC field at Roing area near Passing village, West Siang District and discontinuing with the payment of maintenance allowance at the rate of 75% of his salary per month and for arrear outstanding maintenance allowance since mid 2003 and further, for illegal interference in her personal life by him, spreading her as his wife and thereby claiming her property.

7. The said complaint of the respondent was registered as Case No. RMG/JK-20/2010-11/371 and on receipt its Notice, the petitioner filed his preliminary objection and also replied to her said complaint stating that the complaint filed by the respondent is not maintainable as it did not categorically specify its title whether the said complaint is civil or criminal, though from the reading of the same appeared to be civil in nature arising out of a matrimonial dispute between them, seeking maintenance under Section 125 Cr.P.C. with the prayer for execution of the deed/declaration made by him as well as the decision of the *Keba* dated 04.07.2002. According to the petitioner, if the said complaint is



treated as an application for execution of his said deed/agreement dated 23.09.2001 and *Keba* decision dated 04.07.2002, then it is barred by law of limitation and therefore, the same is liable to be rejected or returned by the Court under Order VII of Rule X of the Code of Civil Procedure, stating the reasons or rejecting the same under Order VII Rule XI (d) of the CPC. It was further contended that as the content of the complainant is civil in nature, cognizance under the provision of Cr.P.C. could not be taken against him.

8. The learned Additional Deputy Commissioner, Rungong after considering the petitioner of the respondent and the reply of the petitioner, framed as many as six issues which are as follows:

- (i) Whether the case is maintainable before the said Court or not or it is within the jurisdiction of the said Court or not?
- (ii) Whether there was any breach of trust to the agreement made before Judicial Magistrate First Class, Aalo?
- (iii) Whether the *Keba* decision is complied with in toto?
- (iv) Whether the landed property was sold without the consent of the decree holder?
- (v) Whether the respondent contested for alteration of the decreed executed by both the parties?
- (vi) Whether the ex-husband claims the complainant/petitioner as his wife after lawful separation from their conjugal life?

9. After hearing the parties, the learned Additional Deputy Commissioner, Rungong found that the respondent (the petitioner herein), sold the land at Roing near Pessing Village and though he wanted to share the cost of said land with the decree holder (the respondent herein), she refused to share with the same, since it was sold without her consent and the learned Court found that the said act of the respondent (the petitioner herein) is illegal and accordingly, answered the Issue No.4 in affirmative and in favour of the wife, the respondent herein.



10. The respondent/petitioner herein admitted before the learned Additional Deputy Commissioner, Rungong that he did not make any attempt before any Court to revoke the agreement that he executed before the learned JMFC at Aalo on 23.09.2001. The said Court observed that though said agreement was made for maintenance of the family members, but it was not contested by said respondent at any stage and therefore, he came to the finding that respondent's any attempt against the same would be barred by Limitation Act and therefore, he answered the Issue No.5 in affirmative and in favour of the present respondent.

11. The said respondent deposed before said Additional Deputy Commissioner that he claimed the petitioner as his wife, since the *Keba* in its decision dated 04.07.2002 had given him the permission to marry the Bon lady, but, it did not give any decision regarding his divorce with the present respondent. The learned Additional Deputy Commissioner, Rungong after going through the laws of *Adi* customs, found that the parties (husband and wife) may stay together or may not, thereby, for their conjugal life, it is up to the decision of both the parties; but when both the husband and wife, live separately, from their conjugal life, for more than six months, it amounts to divorce and that means ending of their married life. Therefore, learned Trial Court came to the finding that the respondent/the present petitioner claiming the sole respondent herein as his wife is illegal and accordingly, answered the Issue No.6 in favour of the present respondent.

12. The Trial Court categorically observed that it is only adjudicating the matter only to ascertain whether there was any deed of agreement by the petitioner herein and any decision by the *Keba* between the parties and during such adjudication, the said Court found that the present petitioner executed the deed of agreement/declaration on 23.09.2001 before the Court of JMFC, Along, with his seven declarations made therein, in presence of the witnesses, which was duly executed by the said Magistrate on 23.09.2001 itself and that on 04.07.2002 a *Keba* decision between the parties was taken place and that the said Court had taken up the matter for implementation of the terms of his said deed of agreement and the *Keba* decision and accordingly, answered the Issue Nos. 1, 2 and 3 in favour of the petitioner wife, the present respondent.



13. Accordingly, by order dated 12.07.2011, the Additional Deputy Commissioner, Rungong directed the petitioner herein that since the present respondent neither contested for alteration of his deed of agreement dated 23.09.2001 made before the JMFC, Aalo nor did she challenged the *Keba* decision dated 04.07.2002; therefore, the Trial Court came to the finding that the present petitioner has to fulfill the said deed of agreement dated 23.09.2001 as well as the *Keba* decision dated 04.07.2002. The said Court also came to the finding that as both the parties were not enjoying their conjugal life, till the date of his said order, therefore, as per *Adi* customs, it amounts to divorce and therefore, the Court found that the present petitioner has no right to claim the sole respondent herein as his wife and in case he claims the respondent as his wife and spread the news in the society, she shall have the right to claim defamation against him. With regard to the immovable (landed) property pertaining to WRC field at Roing near Pessing Village, that was sold by the petitioner, the Trial Court observed that it should be restored back to the custody of the respondent wife or to compensate her in terms of money or kinds and the payment of 75% of his salary should be made to the respondent herein, retrospectively within thirty days.

14. According to the petitioner, the said order of the learned Additional Deputy Commissioner, Rungong dated 12.07.2011 is without jurisdiction and nonest in the eye of law and is liable to be quashed, since the concerned *Keba*, the Court of first instance, did not send the said order dated 04.07.2002 to the Court of Additional Deputy Commissioner for its execution and therefore, the said Additional Deputy Commissioner, Rungong has no jurisdiction to execute the said *Keba* decision dated 04.07.2002.

15. Contesting the claim of the petitioner, the sole respondent herein submits that in her petition before the Additional Deputy Commissioner, Rungong, she did not use the word 'execution' since the terms and conditions of the *Keba* decision dated 04.07.2002 as well as his deed of agreement/ declaration dated 23.09.2001 have been executed by the petitioner which he acknowledges and admits in his objection petition before the Additional Deputy Commissioner, Rungong itself, wherein he admitted the fact that he was giving 75% of his salary to her till the middle of 2003 as per the said declaration dated 23.09.2001 executed before the



JMFC, Aalo and the *Keba* decision dated 04.07.2002 and therefore, once the *Keba* decision has been executed by the petitioner, as such, there is no question of filing second execution petition for the same decision and therefore, the Additional Deputy Commissioner passed the impugned order, only for implementation of said deed of agreement/declaration made by the petitioner himself as well as the said decision of the *Keba* and therefore, the impugned order dated 12.07.2011 is proper. She further submits that their children were with her till 2003 and when communal riots between the communities of Minyong and Galong took place, for the safety of their both the children, she made a request to the petitioner to take them to his place of posting at Pasighat as tense situation prevailed at Aalo at that relevant time and accordingly, their children were shifted to the house of the petitioner and the petitioner cannot take such undue advantage by nullifying the *Keba* decision. She reiterated that the petitioner discontinued the payment of maintenance allowance after making such initial payment for the first nine months, which the petitioner himself admitted, that he could not rebut. It is also stated by her that the petitioner himself admitted in his objection petition before the learned Additional Deputy Commissioner that she is still receiving the house rent as well as the rent from the Trading License in terms of the *Keba* decision dated 04.07.2002 and that his own deed of agreement/declaration dated 23.09.2001 as well as the *Keba* decision dated 04.07.2002 was towards the maintenance allowance of the sole respondent, payable by the petitioner, which attained finality by passage of time, as the said deed/declaration executed by the petitioner and also the *Keba* decision were not challenged by the petitioner before any higher forum.

16. Attempts were made to resolve the dispute between the parties, which relates to marital dispute between them and both the parties were also heard in camera. But such attempts were failed and both the parties prayed for adjudication of the matter by the Court.

17. From the records it is seen that on 23.09.2001 the petitioner by himself made a deed of agreement and declaration before the learned JMFC, Along with certain terms and conditions in favour of the sole respondent as noted above with regard to her maintenance, since the petitioner during the existence of his first



marriage with the sole respondent, married another Bori lady and that said deed of agreement/declaration made by the petitioner was duly executed by the said Magistrate on 23.09.2001 itself, which the petitioner did not deny nor challenged the same before any higher forum. Further, it is also seen from the records of the case that the petitioner partly complied with some of the terms and conditions of the said deed of agreement/declaration dated 23.09.2001, which facts are also admitted by the petitioner. Again, both the parties appeared before a *Keba* held on 04.07.2002 with regard to settlement of their matrimonial dispute, as the petitioner wanted to marry the Bori lady during the existence of their marriage and as per the terms and conditions of said deed of agreement/declaration of the petitioner dated 23.09.2001, the *Keba* on 04.07.2002 ascertained that the petitioner shall pay 75% of his salary to the respondent towards maintenance, shall transfer the RCC building to her as well as four numbers of Trade Licenses to her and that the respondent shall live in a separate house, which the petitioner partly complied with. The petitioner did not challenge the said *Keba* decision dated 04.07.2002 and rather partly complied with it. Therefore, the impugned order dated 12.07.2011 passed by the learned Additional Deputy Commissioner, Rungong cannot be termed as illegal as by the said order the petitioner was directed to fulfill both, his own deed of agreement/declaration dated 23.09.2001 as well as the *Keba* decision dated 04.07.2002, which have attained finality. Moreover, as the petitioner and the respondent lived separately since 2001 till the date of the impugned order dated 12.07.2011, without maintaining their conjugal life and since the petitioner has already married the Bori lady as per the *Keba* dated 04.07.2002 as stated by the petitioner himself, the finding of the learned Additional Deputy Commissioner dated 12.07.2011 that as per the *Adli* customary law that the husband and wife living separately for six months without enjoying their conjugal life amounts to divorce, also cannot be termed as illegal. With regard to the payment of compensation in terms of money or in kinds with regard to sell of immovable (landed) property of the respondent wife by the petitioner, the view of the Trial Court is correct as the petitioner sold said property without her consent and wanted to share its cost with her, which she refused and therefore, the finding of the Trial Court is correct that the respondent is entitled for such amount.



18. considering the entire aspect of the matter and since the petitioner did not challenge the terms and conditions the deed of agreement/declaration dated 23.09.2001 that he himself executed before the learned JMFC, Aalo in presence of witnesses, which was duly executed by the said Magistrate and later approved by the *Keba* in its decision dated 04.07.2002, which already attained finality by efflux of time, as the petitioner neither challenged the said deed of agreement/declaration dated 23.09.2001 nor the decisions of the *Keba* dated 04.07.2002 before any appropriate and/or higher forum of law. Moreover, as the petitioner complied with few terms and conditions made by him in his said deed of agreement dated 23.09.2001 and also complied with some of the decisions of the *Keba* dated 04.07.2002, his any challenge to the impugned order dated 12.07.2011 is barred by petitioner's own action and the law of acquiescence.

19. In view of the above, the petitioner's challenge to the impugned order dated 12.07.2011 passed by the learned Additional Deputy Commissioner, Rumgong, West Siang District, Arunachal Pradesh in Case No. RMG/JK-20/ 2010-11/371, being devoid any merit, stands dismissed.

20. Interim order passed earlier in this matter on 12.08.2011 stands vacated.

21. The Registry shall return the LCR to the appropriate authority with a copy of this order.

22. No order as to cost.

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