

GAHC010150572024



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

Case No. : Mat.App./43/2024

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S/O. LATE DESHARANJAN NATH, R/O. VILL. AMBIKAPUR, PART XI, P/S.
SILCHAR, SUB-DIVISION- SILCHAR, P/O. AND P/S. SILCHAR, DIST.
CACHAR, ASSAM.

VERSUS

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W/O. DR. DEBAJYOTI NATH, D/O. LATE SUDHANGSU RANJAN NATH, R/O.
VILL.- MARUA GRAM, NILAMBAZAR, DIST. KARIMGANJ, ASSAM,
PRESENTLY RESIDING AT- OLD POST OFFICE LANE, MEHERPUR, P/O.
SILCHAR POLYTECHNIC, GROUND FLOOR, MEHERPUR, CACHAR, ASSAM,
PIN-788015.

Advocate for the Petitioner : MR. S P CHOUDHURY, MS B DEVI

Advocate for the Respondent : MR. S BANIK (LEGAL AID COUNSEL FOR RESPONDENT NO. 1), MR. S BANIK

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : **27.02.2026**

(M. Zothankhuma, J)

Heard Mr. S. P. Choudhury, learned counsel appearing for the petitioner as well as Mr. S. Banik, learned legal aid counsel appearing for the respondent.

2. The appellant has put to challenge the impugned order dated 29.06.2024 passed by the learned Principal Judge, Family Court, Cachar at Silchar in F.C. (Civil) Misc. Case No. 16/2023, only to the extent that the maintenance amount of Rs. 12,500/- per month awarded to the younger son Abhishek Nath, should be set aside.

3. The appellant's counsel submits that while there is no dispute with regard to the fact that maintenance can be awarded to the minor son of the respondent, the age of Abhishek Nath at the time of the impugned order was above 18 years, as has been clarified in the evidence of his elder brother given in Misc. DV case No. 80/2022 under Section 12 of the Protection of Women from Domestic Violence Act, 2005, pending in the Court of Sri R. K. Kashyap, Judicial Magistrate 1st Class, Silchar, Cachar. In the testimony of Anirban Nath, it is stated that his younger brother Abhishek Nath was born on 04.05.2005.

4. Mr. S. Banik, learned legal aid counsel appearing for the respondent, on the other hand, submits that in terms of the petition

made under Section 13(1)(ia),(iii) of the Hindu Marriage Act, 1955 at paragraph 2, the appellant husband has stated that the age of Sri Abhishek Nath was 15 years at the time of making of the affidavit on 10.12.2022. He accordingly submits that at the time the impugned order was passed, the younger son Abhishek Nath was below 18 years of age.

5. On considering the fact that the issue raised by the parties herein pertains to a disputed question of fact, i.e., whether the younger son Abhishek Nath was a minor or a major at the time the impugned order dated 29.06.2024 was passed in F.C.(Civil) Misc Case No. 16/2023, we are of the view that the said issue should be decided by the concerned Court which had passed the above order. Accordingly, we direct the Court of the Principal Judge, Family Court, Cachar at Silchar, to take a decision as to whether Abhishek Nath was a minor or a major at the time of passing the impugned order dated 29.06.2024 and pass consequential order(s) thereafter. Consequently, the impugned order dated 29.06.2024 passed in F.C. (Civil) Misc. Case No. 16/2023 is set aside to the extent indicated above.

6. The appeal is accordingly disposed of.

JUDGE

JUDGE

Comparing Assistant