

GAHC040012072023



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

Case No. : IA(C)/150/2023

Smti Tumjum Ete Loyi
Age: 54
Occupation :
Address:W/O Late Dr. Minge Loyi
R/O Polo Colony
near Polo Park
Naharlagun
Papum Pare
Arunachal Pradesh
Pin-791110

VERSUS

Smti Tongam Loyi
Age: 0
Occupation :
Address:W/O Late Minge Loyi
R/O Vill.-Pakam
P.O and P.S - Aalo
District- West Siang
Arunachal Pradesh
Pin-791001

Advocate for : D Medhi
Advocate for : appearing for Smti Tongam Loyi: Advocate appearing for respectively.

BEFORE
HONBLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 04.09.2023

Heard Mr. B. M. Deka, learned counsel for the applicant.

This interlocutory application has been filed by the applicant who has preferred an appeal under Section 24 of the Special Marriage Act, 1954 impugning the judgment and decree dated 24.07.2023 passed in MAT Case No. 02/2021 by the Court of learned District Judge, AALO whereby a marriage certificate dated 26.11.2013 issued by the Marriage Officer, AALO, West Siang District was declared null and void.

The present interlocutory application has been filed under the Order XLI Rule 5 read with Section 151 of the Code of Civil Procedure, 1908 praying for staying the operation of the impugned judgment and order during pendency of MAT Case No. 02/2021.

Mr. B. M. Deka, learned counsel for the petitioner submits that the present petitioner was married to late Dr. Minge Loi on 23.03.2008. Later on, the said marriage was also registered on 26.11.2013. It is also submitted by the learned counsel for the petitioner that the respondent is a stranger to that marriage and however, learned Trial Court has cancelled the marriage certificate on the basis of an application preferred by her under Section 24 of the Special Marriage Act, 1954, whereas any petition under Section 24 of the Special Marriage Act, 1954 may only be represented by either party to the marriage against each other and in the instant case, the respondent was not a party to the which the marriage which was registered by marriage certificate which was registered on 26.11.2013.

Issue notice to the respondent.

The applicant shall take steps for issuance of notice upon the respondent by registered post with A/D, within three days from the date of this order, returnable after four weeks.

However, in the meanwhile considering the fact that on perusal of the marriage certificate, it appears that the said certificate was issued in respect of marriage performed between the present petitioner and Dr. Minge Loi and the respondent was not the party to the said marriage and in view of prima facie bar, on the part of a stranger to bring to institute a proceeding under Section 24 of the Special Marriage Act, 1954, in interim, till returnable date, the operation of impugned judgment and order is hereby kept in abeyance.

JUDGE

Comparing Assistant