

# IN THE HIGH COURT OF SIKKIM

## ORDER SHEET

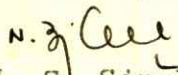

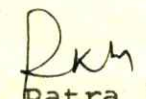
**MAT Appeal** ..... No. **1** of 200 **3**.

**Dr. Sushila Kumari Subba** ..... Petitioner / Appellant

Versus



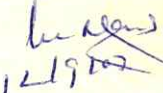
**Sherhand Subba** ..... Respondent

Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
1.	4-8-2003	<p style="text-align: center;"><b>Heard Miss Sapna Rai, learned counsel for the appellant.</b></p> <p style="text-align: center;"><b>Admit.</b></p> <p style="text-align: center;"><b>Issue notice fixing 25-8-2003.</b></p> <p style="text-align: center;"><b>Learned counsel for the appellant undertakes to file requisites within three days.</b></p> <p style="text-align: center;"><b>Call for the records from the Court below.</b></p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;"> <p><i>N. Surjmani Singh</i></p> <p>(N. Surjmani Singh) Judge 4-8-2003.</p> </div> <div style="text-align: center;"> <p><i>R.K. Patra</i></p> <p>(R.K. Patra) Chief Justice 4-8-2003.</p> </div> </div>	<p>Records of trial Court called for on 5/8/03</p> <p>Trial Court record recd. on 7-8-03.</p> <p>Request filed on 6/8/03. Notice issued on 6-8-03.</p> <p>A.D. level recd. here on 21/8/03</p>
2.	25.8.2003	<p style="text-align: center;">rs/</p> <p style="text-align: center;">Heard Miss Sapna Rai, learned Counsel for the appellant.</p> <p style="text-align: center;">Mr. B. Sharma, learned Counsel says that he has instructions to appear on behalf of the respondent. As prayed for by him, put up for admission and final disposal on 8.9.2003.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;"> <p><i>N. S. Singh</i></p> <p>(N. S. Singh) Judge 25.08.2003.</p> </div> <div style="text-align: center;"> <p><i>R.K. Patra</i></p> <p>(R. K. Patra) Chief Justice 25.08.2003.</p> </div> </div>	
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Serial of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
3.	8.9.2003	<p>Place it before Division Bench tomorrow, i.e. on 9.9.2003.</p> <p style="text-align: right;">             ( N. S. Singh )            Judge            8.9.2003         </p>	
4.	9.9.2003	<p>We called both the appellant and the respondent to our chamber during lunch recess and made an endeavour to settle the dispute amicably and to <sup>allow them to</sup> live peacefully as husband and wife. The appellant expressed her willingness to go and live with the respondent, but the attitude of the respondent appears to be adamant and he is not willing to live with her. In the circumstances, we are of considered opinion that no useful purpose will be served in further pursuing the matter.</p> <p>Put up the appeal tomorrow, i.e., on 10.9.2003 for hearing.</p> <p style="text-align: center;">             ( N. S. Singh )            Judge            9.9.2003         </p> <p style="text-align: right;">             ( R. K. Patra )            Chief Justice            9.9.2003         </p>	

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Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
5.	10.9.2003	<p>This appeal at the instance of the wife is directed against the judgment dated 30<sup>th</sup> June, 2003 passed by the learned Judge, Family Court in Family Court Case No.47 of 2002 granting decree for divorce sought <sup>for</sup> by the husband respondent.</p> <p>It is contended on behalf of the appellant that she was not given adequate opportunity to contest the case. Learned Counsel for the appellant also submitted that the mandatory provisions contained in Order XXXII-A Rule (3) C.P.C. as well as Section 9 of Family Courts Act, 1984 were not followed inasmuch as the learned Judge, Family Court did not make any effort for settlement of the matrimonial dispute between the parties. Considering the facts and circumstances of the case, we are of the opinion that there is merit in the above submissions made on behalf of the Counsel for the appellant. For the reasons stated above, we set aside the impugned judgment and remit the matter to the Family Court for disposal according to law. We make it clear that this Court also made an endeavour to settle the dispute between the parties but it did not yield any fruitful result. The learned Judge, Family Court without being influenced by this Court's order dated 9.9.2003, shall comply with Section 9 of the Family Courts Act, 1984 and Order XXXII-A Rule (3) C.P.C.</p> <p>The appeal is allowed. No costs.</p> <p>Lower court records be sent back forthwith.</p> <p style="text-align: center;">   <b>( N. S. Singh )</b>  <b>Judge</b>  <u>10.09.2003.</u> </p> <p style="text-align: center;">   <b>( R. K. Patra )</b>  <b>Chief Justice</b>  <u>10.09.2003.</u> </p>	<p>Records of this Court has sent along with the order sheet on 12-9-03  </p>

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