



Reserved on 08.10.2025
Delivered on 18.12.2025

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

FIRST APPEAL No. - 139 of 2024

Aparna Tripathi

.....Petitioners(s)

Versus

Dr.Gyanandr
a Kumar
Tripathi

.....Respondents(s)

Counsel for Petitioners(s)	:	In Person,	Nitin Kumar
			Mishra
Counsel for Respondent(s)	:	Om Mishra,	Ajay Pratap
			Singh

Court No. - 2

**HON'BLE MRS. SANGEETA CHANDRA, J.
HON'BLE AMITABH KUMAR RAI, J.**

(Delivered by Hon'ble Amitabh Kumar Rai, J)

1. Heard Ms. Aparna Tripathi, appellant in person, and Sri Ajay Pratap Singh, learned counsel for the respondent.

2. The instant first appeal under Section 19(1) of the Family Courts Act, 1984 has been filed by the appellant against the judgment and decree dated 31.05.2024 passed by the Additional Principal Judge, Family Court, Hardoi in Original Suit No. 337/2015, Dr. Gyanendra Kumar Tripathi vs. Aparna Tripathi filed u/s 13 of the Hindu Marriage Act, 1955 (hereinafter referred as 'Act,1955') whereby the suit of respondent-Dr. Gyanendra

Kumar Tripathi for dissolution of marriage has been decreed and the marriage dated 28.6.2009 of Smt. Aparna Tripathi and Dr. Gyanendra Tripathi has been dissolved.

3. The brief facts of the case are that the appellant-wife and the respondent-husband were married on 28.06.2009. At the time of marriage, the respondent-husband was working as an Assistant Teacher in the Basic Education Department, Uttar Pradesh, whereas the appellant-wife was working as an Assistant Manager in a private insurance company at Kanpur. Their marriage was registered at Kanpur on 26.08.2010.

4. The case of the appellant-wife is that before marriage the appellant and respondent were known to each other since October 2005 when the appellant was working on the post of Manager in the ICICI Prudential Life Insurance Company and at that point of time respondent was preparing for civil services and he was unemployed. She supported the respondent during his struggling phase and it was her inspiration and persuasion which led to respondent getting job initially as Assistant Teacher and thereafter he got selected in Civil Services getting rank 375 and was allotted Indian Revenue Services. The respondent after completion of training was posted as Assistant Excise Commissioner at Kolkotta in May, 2012.

5. According to the appellant, after selection, the respondent's behaviour changed, as he was already having an affair with one Shweta Mishra, who was also preparing for Civil Services and later got selected in the

Bihar Civil Services and appointed as Deputy Collector. The appellant claims she became aware of the affair only when the respondent was transferred from Kolkata to Haldia.

6. The allegation is that the respondent married Shweta Mishra on 12.11.2012 at Baijnath Dham, Bihar, and at that point of time Shweta Mishra was mother of six-year-old daughter from the marriage with one Chhunilal Tripathi.

7. On coming to know of such extra marital affair and marriage, the appellant made a complaint to Commissioner, Central Excise, Haldia, at Kolkata on 26.11.2012. Immediately, thereafter respondent-husband filed divorce petition under section 13 of the Act, 1955 on 29.11.2012 in the Court of East Medinipur on the basis of last residing at official residence House No. 12/37, Indian Oil Corporation, Kasba-Haldia, District-Eastern Mednipur, West Bengal. In the meantime Shweta Mishra also filed divorce petition against her husband, Chhunilal Tripathi, which was decreed on 10.01.2013 by mutual consent.

8. The appellant also made complaint on 09.07.2013 against Shweta Mishra to District Magistrate, Chapra, Bihar where she was working as Deputy Collector with regard to her marriage with respondent. Pursuant to the complaint of the appellant, Shweta Mishra was suspended after framing charges in November 2014 and the disciplinary proceedings against Shweta Mishra were initiated and she was dismissed from service.

9. It is the case of the appellant-wife that she was left alone by the respondent-husband after marriage with Shweta Mishra, hence the appellant having no option filed application under Section 125 Cr.P.C. for maintenance as well as complaint under Section 12 of Domestic Violence Act, 2005. The said complaints were heard together and were withdrawn on compromise by the appellant after the respondent gave affidavit in the said proceedings to remit half of his salary in hand to the appellant.

10. After compromise before the Judicial Magistrate, Patna, respondent-husband started living with appellant-wife at Kolkata as by then the respondent was transferred back from Haldia to Kolkata. The respondent-husband also did not pursue the divorce petition filed by him against the appellant in the Court of Eastern Medinipur, West Bengal and got it dismissed for want of prosecution on 14.2.2014. Thereafter, on 26.03.2014 Shweta Mishra came to Kolkata at the residence of respondent where appellant and respondent were residing after compromise, and started abusing appellant which resulted in a brawl in which respondent-husband sided with Shweta Mishra and assaulted the appellant, resulting in one F.I.R. being lodged by the appellant against her husband and Shweta Mishra. The respondent-husband filed a second divorce petition for dissolution of the marriage under Section 13 of Hindu Marriage Act, 1955 on 22.04.2015 in the Court of First Additional Principal Judge, Family Court, Hardoi which was registered as Original Suit No. 337 of 2015. Various allegations were leveled against the appellant-wife by the respondent-husband in the divorce petition mainly

alleging that several false cases were filed against the respondent and his family members by the appellant causing mental cruelty to the respondent.

11. During the course of hearing of the Divorce Petition total 8 issues were framed, three issues were framed on 6.4.2016, one issue on 27.8.2016 and four issues were framed on 18.11.2017 which are mentioned in paragraphs 39, 40 & 41 of the judgment and decree dated 31.5.2024 challenged in the present appeal which are reproduced herein, below:-

39- उभय-पक्ष के अभिवचनों के आधार पर दिनांक 06-04-2016 को निम्नलिखित वाद-बिन्दु विरचित किए गए-

01- क्या प्रत्यर्थिनी ने याची के साथ क्रूरता कारित की है?

02- क्या श्वेता मिश्रा, जिनके नाम का वर्णन लिखित उत्तर के पैरा-110 में किया गया है, को माननीय उच्च न्यायालय, इलाहाबाद द्वारा निर्मित हिन्दू मैरिज एण्ड डाईवोर्स रूल्स-1956 के नियम-13 के अन्तर्गत लिखित उत्तर की प्रमाणित प्रति भेजना अनिवार्य है?

03- किस अनुतोष, यदि कोई देय हो, को याची पाने का अधिकारी है?

40- पुनः उभय-पक्ष के अभिवचनों के आधार पर दिनांक 27-08-2016 को निम्न वाद-बिन्दु विरचित किया गया-

04- क्या याची का वाद-पत्र नियमानुसार नहीं है और निरस्त किए जाने योग्य है?

41- पुनः उभय-पक्ष के अभिवचनों के आधार पर दिनांक 18-11-2017 को निम्न वाद-बिन्दु विरचित किया गया-

05- क्या याची की याचिका प्रांगन्याय के सिद्धान्त से बाधित है, जैसा कि वादोत्तर की धारा-134 में कहा गया है?

06- क्या याची की याचिका में आवश्यक पक्षकारों के असंयोजन का दोष है?

07- क्या न्यायालय को विचाराधीन याचिका सुनने का क्षेत्राधिकार प्राप्त है?

08- क्या दावा वादी काल बाधित है?

12. During the pendency of the divorce petition (Original Suit No.337 of 2015), the appellant filed an Application No. 268-Ga for taking on record the documents filed by her along with the said application dated 20.10.2021 to take it as evidence of marriage between respondent and Shweta Mishra. While deciding the application No.268-Ga, the family court passed order dated 23.05.2024 observing that the documents filed by the appellant on 22.10.2021 and the photographs of marriage of the respondent with Shweta Mishra are already on record for which there is no requirement of oral evidence, and while deciding the divorce petition, the Court will take into consideration Section 14 of Family Court Act, 1984 and will pass judgment on due consideration of all the relevant materials. The relevant extract from the order dated 23.05.2024 is reproduced herein below:-

जो कागजात अभिलेखीय साक्ष्य में 22-10-2021 को विपक्षिया ने दिए हैं तथा जो प्रार्थना-पत्र के पैरा 06 में उसके द्वारा याची एवं श्रीमती श्वेता मिश्रा के मध्य अविधिक रूप से अनुष्ठित हुए विवाह के अनेक फोटोग्राफ, जिनको विपक्षिया ने प्राईवेट डाकूमेण्ट कहा है, जो शामिल भिसिल हैं। उन्हें धारा-14 फेमिली कोर्ट एक्ट के प्राविधानों के तहत न्यायालय अपने विवेक पर ही निर्णय पारित करते समय पढ़ेगा, इसके लिए अलग से कोई मौखिक साक्ष्य की आवश्यकता नहीं है।

इसके अतिरिक्त अब जबकि साक्ष्य पूर्ण हो चुका है, किसी भी मौखिक साध्य के आने का कोई सवाल नहीं रह जाता है और ऐसा करना परीक्षण को डिनोवो स्टार्ट करना हो जाएगा, जबकि पहले से ही दोनों पक्षों का साक्ष्य पूर्ण हो चुका है।

प्रार्थना-पत्र मात्र वाद को लम्बित करने की नियत से दिया जाना प्रतीत होता है

प्रार्थना-पत्र 268 ग निरस्त किया जाता है। पत्रावली पूर्व से ही निर्णय के लिए नियत है। यदि विपक्षिया चाहे तो अपना लिखित बहस दिनांक 27-05-2024 तक प्रस्तुत कर सकती है।

13. While deciding the issue no. 1 with regard to cruelty committed by appellant-wife as alleged by the respondent-husband, the learned Family Court held that the evidence produced by the appellant in the divorce petition with respect to photographs of the marriage between the respondent and Shweta Mishra on 12.11.2012 at Baijnath Dham cannot be looked into as the Patna High Court has while passing the judgment and order dated 06.09.2017 already held that those photographs and evidences cannot be relied upon to give any finding regarding the marriage of the respondent with Shweta Mishra.

14. We find that the aforesaid finding recorded by the Family Court is per se illegal as the Patna High Court while passing the judgment and order dated 06.09.2017 in C.W.J.C. No. 5799 of 2016 did not record any such finding, rather it recorded that the disciplinary proceedings against the writ petitioner Shweta Mishra cannot be based on such documents which are yet to be proved only on the ground of procedural impropriety the writ petition was allowed. The Patna High Court while passing the judgment and order dated 06.09.2017 did not record a finding that the photographs and documents produced by the appellant before the departmental authorities of Shweta Mishra which were same as that in the present proceedings, are unreliable and cannot be

taken into consideration. The Letters Patent Appeal No. 687 of 2018 filed by the State of Bihar against the judgment and order dated 6.9.2017 was dismissed on judgment and order dated 20.7.2023.

15. Principle of res judicata is attracted where the matter in issue in later proceedings has directly and substantially been in issue in earlier proceedings, between the same parties, in a competent forum having jurisdiction. Patna High Court was only deciding a writ petition filed by Shweta Mishra challenging her dismissal order. This issue cannot be said to be res judicata, as it was not thrashed out on merits by any competent Court.

16. The appellant-wife during the course of argument pointed out that against the judgment and order dated 06.09.2017 passed by the Patna High Court, the appellant filed L.P.A. no. 1426 of 2017 which was dismissed on 8.12.2017 on the ground of locus standi as appellant was only the complainant in the disciplinary proceedings which were initiated against Shweta Mishra leading to her dismissal from service. The appellant thereafter filed I.A. No. 5177 Of 2018 and I.A. No. 4 of 2019 in L.P.A. No. 687 of 2018 filed by the State of Bihar against the judgment and order dated 6.9.2017 which were rejected vide order dated 8.8.2019 against which Special Leave Petition (Civil) Diary No(s) 37658/2019 was filed before the Hon'ble Supreme Court by the appellant. The Hon'ble Supreme Court by its order dated 04.11.2019 disposed of the SLP clarifying that any such finding regarding veracity of the documents recorded by the Patna High Court will not cause any prejudice to the

appellant in other matrimonial proceedings which are pending. The order of the Hon'ble Supreme Court passed on 04.11.2019 reads as under :-

The High Court has come to the conclusion that the petitioner was not a necessary or proper party to the Letters Patent Appeal filed by the State in a service matter arising out of a writ petition filed by the eighth respondent. This part of the reasoning of the High Court is unexceptionable. Hence, on that ground, we are not inclined to entertain the Special Leave Petition under Article 136 of the Constitution. However, any observations which have been made by the High Court as against the petitioner in the impugned order shall not come in the way of the petitioner in any pending or future proceedings pertaining to the personal rights and contentions of the petitioner in her matrimonial dispute.

Subject to the aforesaid observations, the Special Leave Petitions are dismissed.

Pending application, if any, stands disposed of.

We are of the view that the finding recorded by the Family Court with respect to the documents and photographs of marriage of respondent and Shweta Mishra solely based on judgments of Patna High Court is perverse in light of the order dated 4.11.2019 passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) Diary No(s) 37658/2019.

17. The factum of marriage between the respondent and Shweta Mishra on 12.11.2012 was vital in proceeding under Section 13 of Act, 1955 initiated by

the respondent-husband for divorce as the allegations of cruelty were based primarily on the ground that the appellant-wife continuously made false allegations of adultery of plaintiff having an affair with Shweta Mishra and lodged false criminal cases. The conduct of the respondent-husband was not taken into consideration by the Family Court while passing the judgment and decree dated 31.5.2024 in Case No. 337/2015.

18. After being selected in the Civil Services, respondent-husband changed his behaviour towards the appellant and solemnized a second marriage with Shweta Mishra during the subsistence of marriage with the appellant-wife, which vital fact was required to be tested and verified, but Family Court ignored the evidences produced by the appellant on a wrong pretext. The respondent has thereafter again married Shweta Mishra on 28.07.2024 after judgment and decree dated 31.5.2024 passed in divorce petition to give such relationship legal sanctity, which in itself indicates an pre-existing extra-marital relationship between the respondent and Shweta Mishra, the respondent husband was denying such relationship throughout the proceedings before the Family Court in the divorce petition as well as before the departmental authorities, where the complaint of the appellant was pending alleging bigamy against the respondent.

19. The sequence of events narrated herein above indicate that the appellant-wife for the first time made complaint to the departmental authorities only on 26.11.2012 when she came to know of the extra marital

affair and marriage of respondent with Shweta Mishra on 12.11.2012. After complaint by the appellant-wife to the departmental authorities regarding illegal marriage, respondent-husband immediately filed divorce petition on 29.11.2012 in the Court of East Medinipur, West Bengal. The appellant-wife had filed application under section 125 of Cr.P.C. for maintenance and also initiated proceedings under Domestic Violence Act, 2005 only subsequently. Those were the legal remedies available to her and taking recourse to legal remedies cannot be said to be cruelty. A compromise occurred and the appellant withdrew the cases filed by her and the appellant and respondent started residing together. The respondent-husband thereafter also did not pursue the divorce petition filed by him in the Court of East Mednipur which was dismissed for want of prosecution on 14.2.2014.

20. But again, Shweta Mishra stepped in matrimonial life of appellant and respondent and she came to Kolkotta and confronted appellant at her residence resulting in a brawl on 26.3.2014 in which respondent sided with Shweta Mishra resulting in lodging of First Information Report. Thereafter on 22.04.2015 divorce petition was once again filed by the respondent-husband in the Court of First Additional Principal Judge, Family Court, Hardoi registered as O. S. No. 337 of 2015 which was decreed in favour of respondent-husband vide judgment and decree dated 31.05.2024 which is under challenge in the instant appeal.

21. The Family Court while passing the judgment and order dated 31.5.2024 should have verified the

allegations of second marriage of respondent-husband before reaching to the conclusion of cruelty based on the false allegation of adultery by the appellant-wife. The Family Court failed to appreciate the desperation of a wife (appellant) to save her marriage and reclaim her husband who went after another woman and married her also during subsistence of his first marriage. This Court is of the view that without verifying the second marriage of respondent the Family Court could not have recorded finding of cruelty against the appellant. The reliance placed by the Family Court on the observations made by the Patna High Court in order dated 06.09.2017 passed in C.W.J.C. No.5799 of 2016 to reject the claim of bigamy and marriage between respondent-husband and Shweta Mishra on 12.11.2012 is completely erroneous in view of the order dated 4.11.2019 passed by the Honourable Supreme Court in S.L.P. (Civil) Diary No(s) 37658. There is no assertion of any physical cruelty committed by the appellant-wife against the respondent-husband in divorce petition. The allegations of mental cruelty in divorce petition are based on filing of certain alleged false cases by the appellant-wife against respondent-husband and the allegations made by appellant-wife of adultery. For ascertaining that whether the allegations of adultery is false, the family Court should have verified the factum of allegations of marriage between respondent and Shweta Mishra on the basis of documentary and other evidences which were filed by the appellant during the course of proceedings before the Family Court in O.S. No. 337 of 2015. Legal proceedings drawn by the appellant wife asserting her legal rights cannot be basis for drawing any adverse inference as she was desperate to save her

marriage. There is no evidence on record which would show that the appellant-wife committed cruelty upon the respondent-husband while living with him after marriage and it is only when she came to know of marriage of respondent with Shweta Misra on 12.11.2012, she for the first time made complaint to the department on 26.11.2012 which is natural for any wife to take such recourse. Instead of clarifying his stand of second marriage with Shweta Mishra, respondent-husband on mere complaint to the department by appellant instituted divorce petition on 29.11.2012 in the Court of East Medinipur, West Bengal. Thus, it is not appellant-wife, rather respondent-husband who subjected the appellant to mental cruelty. The legal proceedings were drawn by the appellant-wife only when she came to know about the second marriage of respondent-husband with Shweta Mishra and no adverse inference can be drawn on basis of such legal proceedings initiated by the appellant-wife.

22. In view of the above discussions, the judgment and decree dated 31.05.2024 passed by Additional Principal Judge, Family Court, Hardoi in O.S. No. 337 of 2015 is set aside and the instant appeal is **allowed**. The respondent is directed to part with one third of his monthly salary to the appellant every month for her maintenance which will be transferred in bank account of appellant by 10th of every month. The drawing and disbursing officer / competent authority of the Department of Custom and Central Excise, Government of India shall ensure transfer of one third salary of the respondent to the bank account of appellant, the details of which will be provided by the

appellant to the concerned authority within 2 weeks from the date of obtaining certified copy of the order.

23. The cost of litigation is assessed by us as Rs.1,00,000/-, which will be given by the respondent to the appellant within one month by way of bank draft.

(Amitabh Kumar Rai, J) (Mrs. Sangeeta Chandra,J.)

December 18, 2025

Ashish Dewal