

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.216 of 2010

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Ragini Devi D/O Sri Jyotish Chandra Choudhary R/O Vill Chhotee, Khanjarpur,
P.S.+District -Bhagalpur

.... Opp. Party Appellant

Versus

Mukesh Kumar S/O Ram Charitra Sharma R/O Vill Nayagaon (Pachkhutti),
P.S.Parbatta, District-Khagaria

.... Petitioner.... Respondent

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Appearance :

For the Appellant/s : Mr. Pushkar Narain Shahi, Sr. Advocate with
Mr. Sanjeet Kumar Singh, Advocate

For the Respondent/s : Mr. Surya Kant Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 19-02-2015

Heard learned counsel for the parties.

2. Wife is the appellant herein. She has filed this Appeal
assailing the judgment dated 8th December, 2009 passed by the
Principal Judge, Family Court, Khagaria in Divorce Case No. 5 of
2001 whereunder suit for divorce has been decreed and the marriage

solemnized between the parties on 24.01.2001 has been dissolved without appreciating the preliminary objection taken on behalf of the opposite party-wife that the suit itself was not maintainable as the same was filed on 03.07.2001 i.e., within six months of the date of marriage between the parties.

3. Aforesaid submission has been noticed by the court below while discussing issue no. 3 in paragraph 7 at pages 4-5 of the impugned judgment. The court below appears to have taken provisions contained in Section 14 of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act') to be directory, as according to the court below, in case of 'exceptional hardship' a suit for divorce can be filed within one year of the marriage with the leave of the Court. In this connection, we may refer to Section 14(1) of the Act whereunder facts constituting 'exceptional hardship' is required to be brought to the notice of the Court by filing a petition seeking leave of the Court to file a suit for divorce within one year of the marriage. In the present case, neither any such petition was filed nor the court below was made aware of any such fact which could bring the present case within the purview of 'exceptional case' in which a divorce case is required to be filed and entertained within one year of the marriage. From the other facts discussed in the judgment, we are satisfied that the present case is not a case in which the special

provision under Section 14 (1) of the Act could have been pressed.

4. In the circumstances, we have no option but to set aside the judgment dated 8th December, 2009 passed by the Principal Judge, Family Court, Khagaria in Divorce Case No. 5 of 2001 with a direction to the respondent, who is a constable in R.P.F., to pay maintenance inclusive of maintenance *pendente lite* and litigation cost amounting to half of his salary right from the date of institution of suit to the appellant. Arrears of maintenance amount in the light of this order be paid by the respondent to the appellant in the court below within three months from today. The current maintenance amount be paid to her every month, failing which the court below shall take coercive steps against the respondent. Any amount already paid to the appellant during pendency of the suit/appeal shall however be adjusted from the amount which is to be paid hereafter.

5. Appeal is allowed.

(V.N. Sinha, J)

(Ahsanuddin Amanullah, J)

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