

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.432 of 2012

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Alok Chandra Rai, son of Late Baskit Rai, resident of Vill. - Hariharpur & P.O. Rajauli, P.S. Hajipur Sadar, Distt. - Vaishali

.... Appellant

Versus

Smt. Sabita Rai, daughter of Shyama Prasad Yadav & wife of Alok Chandra Rai, resident of Village - Rahardiyara, P.S. Sonepur, Distt. - Saran

.... Respondent

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Appearance :

For the Appellant : Mr. Rajendra Narayan, Senior Advocate.
Ms. Anju Narain, Advocate.

For the Respondent : Ms. Madhavi, Advocate.

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

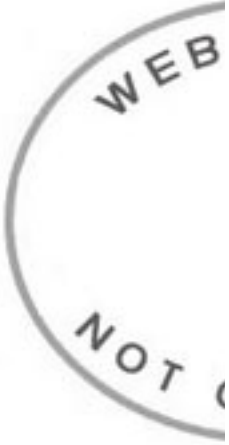
(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 18-02-2015

Petitioner husband is the appellant herein.

By filing this appeal he has assailed judgment dated 05.06.2012 passed by Principal Judge, Family Court, Vaishali at Hajipur in Divorce Case No. 152/2009, whereunder request of the husband to dissolve his marriage with respondent in the light of the grounds specified in Section 13 of the Hindu Marriage Act, 1955 has been refused, however, without directing for payment of any maintenance to the wife. Respondent wife is not aggrieved by failure of the court below to grant any maintenance to her.

2. From the impugned judgment it appears that the court below has framed two issues. Issue No. 1 is about cruelty on account of failure of the wife to fairly treat the children of the husband from his first wife as also his parents, the in-laws of the respondent. The second issue is about wilful desertion by the respondent wife. In the light of the evidence led by the parties appraised in Paragraph 5 the court below has decided Issue No. 1 about cruelty in Paragraph 7, wherefrom it appears that by leading evidence appellant husband wanted to persuade the court to accept the ground of cruelty with reference to neglect by the wife of the children of the appellant from his first wife including his parents. In this connection respondent wife could succeed in extracting from the appellant in cross-examination that his children born out of the first wedlock were aged 25, 22, 20 and 14 years and hardly required any personal attention from the respondent. So far neglect to the parents, the wife made it clear in her evidence that parents of the husband were old and died because of old age/ailment and she cannot be said to have not attended on them. Issue No. 2 regarding



desertion has been discussed in Paragraph 8 wherefrom also it appears that the wife has been able to establish that it was the behaviour of her husband which persuaded her to leave the matrimonial home, to reside at her parents' house after she began to assert herself in discharge of public duty as Mukhia of the Gram Panchayat contrary to the advise of her husband.

3. From the discussion made in the impugned judgment, we are satisfied that appellant has not made out any case for divorce. The appeal is dismissed.

(V.N. Sinha, J)

(Ahsanuddin Amanullah, J)

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