

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.704 of 2012

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1. Kedar Singh S/O Late Lal Singh R/O Village - Tajpur, Police Station - Ghoshi, District - Jehanabad

.... Appellant/s

Versus

1. Smt. Kamlawati Sharma @ Kamla Singh W/O Kedar Singh R/O Mohalla - Bal Kishanganj, Police Station - Alamganj, District - Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. D. K. Sinha, Sr. Advocate
Mr. Nirmal Kumar, Advocate.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL ORDER

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

5 30-04-2015

Heard learned counsel for the appellant.

2. Having considered the averments made in I.A.

No. 3198 of 2015, we are satisfied that the appellant herein was prevented by sufficient cause in not preferring the present appeal within time and the delay of 18 days caused in filing the present appeal is condoned. I.A. No. 3198 of 2015 is, accordingly, allowed.

3. Having allowed the Interlocutory application,

we have heard learned counsel for the appellant on the merits of the appeal. The appellant husband by filing this appeal has assailed the judgment dated 09.07.2012 passed by the Additional Principal Judge, Family Court, Patna in Matrimonial Case No. 247

of 2001 wherein the said matrimonial case has been allowed under Order XII Rule 6 of the Code of Civil Procedure on the basis of the admission made by him in the written statement that the marriage solemnized between him and respondent herein on 24.12.1993 be dissolved.

4. It is submitted on behalf of the appellant that in the written statement there is no admission of the fact of marriage between the parties. The appellant has only said that assuming there is marriage between the parties, he has no objection if the so called marriage is declared a nullity. The court below, however, refused to accept such submission with reference to the averment made by the appellant himself in paragraph 22 of the written statement which is quoted here-in-below:-

“22. That in the facts and circumstances of the present case, this respondent has no objection in granting the decree declaring the marriage dated 24.12.1993 as nullity and has come to an end.”

5. From perusal of the aforesaid paragraph 22, it appears that the appellant himself has stated that he has no objection in granting a decree declaring the marriage dated 24.12.1993 as nullity and has come to an end.

6. From a bare perusal of paragraph 22 of the written statement it appears that the marriage took place on

24.12.1993 and the appellant has no objection if the same is declared as nullity. Once the marriage has been performed, it can be dissolved by divorce, the court below in the present case having appreciated the averment made in the written statement passed the impugned judgment granting divorce on the basis of the admission made by the defendant.

7. We see no reason to take a different view in the matter. This appeal is dismissed.

(V.N. Sinha, J)

(Nilu Agrawal, J)

Amin/-

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