

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.684 of 2011

Amlesh Jha, son of Sri Govind Jha @ Bangtu Jha, resident of Village – Gangauli
Kanakpur, P.S. – Sakatpur, District - Darbhanga

.... Petitioner/Appellant

Versus

Smt. Pinki Jha, Daughter of Sri Amarnath Jha, resident of village – Kharrakh, P.S.
– Bhairav Asthan, Via – Sarisab Pahi, District - Madhubani

.... Opposite party/Respondent

Appearance :

For the Appellant/s : Mr. Durga Nand Jha, Advocate
Mr. Bhagya Narayan Jha, Advocate
For the Respondent/s : Mr. Asoka Jang Bahadur, Advocate
Mr. Upendra Kumar Chaubey, Advocate

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

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

Date: 07-04-2015

In the light of the order dated 23.03.2015, appellant-husband, respondent-wife, their two sons and father of the respondent-wife are present.

2. Heard learned counsel for the appellant and the respondent.

3. Husband is the appellant. He has filed this Miscellaneous Appeal assailing the order dated 27.04.2011 passed by Principal Judge, Family Court, Darbhanga in Matrimonial Case No. 61 of 2009 whereunder his petition for restitution of conjugal rights has been rejected as his wife refused to leave her job as a Panchayat Teacher.



4. It appears, appellant is serving in I.L. & F.S. Engineering and Construction Company Limited in New Delhi, registered office at Hyderabad as Foreman (S-4), which is evident from his job profile annexed with the supplementary affidavit filed today and unless the wife leaves her job in her paternal home village it may not be possible for the two to cohabit in New Delhi. Petition for restitution of conjugal rights was rejected under the impugned order as the wife refused to leave the job to cohabit with the appellant in New Delhi.

5. During hearing of this appeal, we asked the respondent-wife that she having married a person who is serving in New Delhi from before his marriage, is it expected of him to return to his village home for cohabiting with his wife. Wife, however, submitted that from the job profile of the husband, it does not appear that he is a permanent employee of the company and that if she leaves her job as a Panchayat Teacher and ultimately the husband also loses his job then the family may not be able to survive, as such, it is necessary for her to continue in the job to support not only herself but the two sons born out of their wedlock, one seven years old and other 1 ½ years old. During further deliberation, appellant agreed to deposit per month salary of the wife in her bank account as also to provide expenses for maintenance of the entire family in New Delhi.



Appellant further informed us that the place where he is presently residing in New Delhi, there are so many private schools and the wife may also get job in one of those schools and earn the same amount which she is presently getting as Panchayat Teacher or even more, even then he will continue to deposit amount equivalent to her salary in her bank account from his earnings as Foreman (S-4). In this connection, he points out that his annual salary is Rs. 3,64,050/- and every month he is getting more than Rs. 30,000/- .

6. Before parting with this order, we would like to refer to the evidence of the respondent, Annexure-1 recorded by the Bihar State Woman Commission, Patna in Case No. 40 of 2010 filed by her in which she deposed on 11.08.2010 and admitted that earlier also she left her job as Panchayat Teacher when she had gone to New Delhi for cohabiting with the appellant.

7. From the evidence as also from the other facts noted above, it is quite evident that parties prior to their marriage were aware of the fact that to cohabit husband and wife in the present case will have to reside in New Delhi and for securing such purpose she will have to leave her job. In the circumstances, we direct the wife to cohabit with her husband at the place where he is presently working/ residing i.e. New Delhi or wherever he resides pursuant to any other posting.

8. In the light of our order above, we set aside the order dated 27.04.2011 passed by Principal Judge, Family Court, Darbhanga in Matrimonial Case No. 61 of 2009, as we do not find any reasonable excuse for the wife to have withdrawn from the society of her husband.

9. Let a decree of restitution of conjugal rights be passed in favour of the appellant directing the wife to cohabit with him wherever he resides.

10. Appeal is, accordingly, allowed.

(V.N. Sinha, J.)

(Ahsanuddin Amanullah, J.)

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