

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.755 of 2011

1. Bibi Farhana Sadre Alam R/O, Vill.-Bisharia, P.S.-Bhargama, Dist.-Araria

.... Appellant/s

Versus

1. Md. Sahabuddin @ Shahabuddin Late Md. Muslim R/O, Vill.-Khazanchi Hat, Dist.-Purnea

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Anil Kumar Jha, Sr. Advocate
Mr. Shekhar Kumar Singh, Advocate

For the Respondent/s : Md. Anis Akhtar
Md. Arif Daula Siddiqui
Asif Kalim

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL ORDER

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

11 22-06-2015 Heard learned counsel for the appellant and the learned counsel for the respondent.

2. This appeal has been filed by the wife assailing the impugned order dated 05.09.2011 passed by the Principal Judge, Family Court, Purnia in T.S. (Matrimonial) No. 53/2006, whereunder the Matrimonial case filed by her husband has been decreed ex-parte dissolving her marriage.

3. It is submitted on behalf of the appellant that from perusal of the order sheet of the T. S. (Matrimonial) Case it will appear that notwithstanding her appearance in the Court below,

the Court did not choose to examine her on the ground that prior to her appearance, the matter was fixed for ex-parte hearing and later her lawyer choose not to represent her and allowed the case to proceed ex-parte.

4. It is submitted on behalf of the respondent that from the order sheet dated 06.12.2007, 10.11.2008 and 4.12.2008 as also other orders it would appear that wife was not appearing and even chose not to deposit the cost, which will appear from the order dated 29.04.2011 and in such circumstances, the ex-party order was passed.

5. From perusal of the entire order sheet, we are satisfied that wife appeared in the proceedings to contest the divorce case but as she was not provided with the litigation cost she could not instruct her lawyer to represent and the matter proceeded ex-parte for failure of the wife to deposit cost of Rs. 100/-.

6. The Court below should have appreciated that the wife was not in a position to maintain herself without any support from the husband, should have recalled the ex-parte order without payment of cost. In matrimonial matters, the Court below has to appreciate that without any financial support from the husband, it is difficult for a wife to contest the divorce proceeding.

7. In such circumstances, we set aside the ex-parte order

dated 05.09.2011 fixing 7th July, 2015 as the date for appearance of the wife in Court below on which date, the Principal Judge, Purnia will examine her and fix the case for day-to-day hearing and examine all other witnesses on her behalf within a period of two weeks from 7th July, 2015 and thereafter, dispose of the case in accordance with law, as early as possible in any case within one month from 21st July, 2015.

The appeal stands disposed of.

(V.N. Sinha, J)

(Nilu Agrawal, J)

Sudha/-

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