

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.179 of 2011

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Sandeep Kumar Agarwal son of Shri Ram Niwas Agarwal, C/o Sant Kabir Food Products, D-67/68, Industrial Area, Road No. 20, P.S. – Kotwali, District – Sant Kabir Nagar, (U.P.)

.... Petitioner / Plaintiff / Appellant

Versus

Smt. Namrata Agarwal wife of Sandeep Kumar Agarwal, Daughter of Shri Raj Kumar Vohra, resident of vohra Gali, Mohalla – Katki Bazar, P.S. – Town, District – Darbhanga

.... Opposite Party /Defendant /Respondent

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Appearance :

For the Appellant : M/s D.K.Sinha, Sr. Advocate and
Girish Chandra Jha, Advocate

For the Respondent : M/s Rajeev Roy and
Dharmesh Kumar Shrivastava, Advocates

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE DR. JUSTICE RAVI RANJAN

CAV JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date: 24.11.2015

I have heard the parties and perused the records of this case.

This appeal has been preferred against the judgment and decree dated 18.12.2010 passed by Principal Judge, Family Court, Darbhanga in Matrimonial Case No. 305 of 2005/ 14 of 2007 by which the court below has dismissed the petition filed by the appellant under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as ‘the Act’) for restitution of conjugal right.

This case was filed after the filing of Matrimonial Case No. 22/2005 by the respondent for dissolution of marriage under



Section 13 of the Act. It has been noticed in the impugned judgment that both the parties were called for conciliation but that could not succeed. The children were not even ready to meet their father. As a result, the husband was directed to file his written statement in the aforesaid case. However, by then he had already filed Matrimonial Case No. 305 of 2005 in the Family Court, Gorakhpur under Section 9 of the Act for restitution of conjugal right. A Transfer Petition (Civil) No. 225 of 2006 was filed for transfer of the matter to the Family Court, Darbhanga. The matter traveled up to the Apex Court and finally the Supreme Court directed the case to be transferred to the Court of Principal Judge, Darbhanga and also for analogous hearing of both cases, i.e., Matrimonial Case No. 305 of 2005 filed under Section 9 of the Act and renumbered as Matrimonial Case No. 14 of 2007 as well as the Case No.22/2005. The Matrimonial Case No. 14/2007 has been dismissed whereas the case filed under Section 13 of the Act by the wife has been allowed and a decree of dissolution of marriage has been passed by the Court.

I have already dealt with the matter of dissolution of marriage and have dismissed the appeal for the reasons mentioned in the judgment. Both the appeals were heard together and it has already been held in the Misc. Appeal No. 178 of 2011 that decree of dissolution of marriage on the ground of cruelty passed by the



court below cannot be faulted with in the facts and circumstances of the case. The Matrimonial Case No. 14 of 2007 has been filed by the petitioner-appellant stating that, after the marriage on 3.12.1993, the opposite party no. 1, i.e., the wife came to her matrimonial house and was living there without any complaint. He has stated that the petitioner-appellant is having Hindu joint family and he has two brothers and one sister apart from his parents and grandmother. It has been stated that the opposite party / respondent no. 1 was of open and free minded lady and used to enjoy roaming in market and cinema, restaurant etc. She never believed in family. She always used to pressurize the petitioner – appellant to live separately from the joint family or to live at Darbhanga at her parents house and help them which was never accepted by the petitioner. It is stated in the plaint that, in October, 2003, the son of the brother of wife became ill and the doctors advised surgery. On that pretext she went to Darbhanga along with children with assertions that she will come within 10-12 days but she never came back. At the time of Holi the petitioner –appellant went there and asked her to come back to Gorakhpur but her parents became angry started pressurizing the petitioner to get separated from his father then the petitioner came back. However, it is stated in the petition that he still loves his wife and children and want them back. Hence the matrimonial case was

filed.

Wife also filed written statement refuting the claim and stated that she has already filed a matrimonial case for grant of decree of dissolution of marriage. It is stated that she had been ill-treated by her in-laws including the husband. She alleged that the applicant treated his father in-law as money bank and always demanded money for repayment of loan. When he could not succeed in doing that he started treating her and that had compelled her to leave Gorakhpur and reside at his parental house. She has almost reiterated all things which she has stated in the plaint of Matrimonial Case No. 22 of 2005.

On consideration of the pleadings of both the parties the court below framed following issues:

- “1. Whether the applicant is entitled for a decree of Restitution of conjugal right or the Opposite Party has deserted herself without any cause the applicant?
2. Whether the applicant is entitled to decree of restitution of conjugal right or he is himself guilty of neglect and willful desertion ?
3. Whether the case is barred by the law of limitation?
4. Whether the behaviour of applicant with Opposite Party was abnormal?
5. Whether the applicant made demand for money for running of his business at Gorakhpur?
6. Whether the applicant and his parents tortured the Respondent no. 1 at Gorakhpur in various ways and

Respondent no. 1 was forced to leave Gorakhpur and decided to live with her parents at Department?

7. Whether the applicant is entitled for any other relief or reliefs?"

Upon appreciation of evidence, the court below has come to the conclusion and recorded finding that the cruelty and the conduct of the appellant towards his wife are not merely ordinary wear and tear of marital life rather the same are grave and weighty and in fact the wife has not deserted the petitioner rather the petitioner has forced to her to go at her parental home. The wife, after suffering all the cruelties committed on her and having tolerated the same for so many years and on being forced away from her matrimonial house, is now maintaining her children and imparting education to them at Darbhanga. In the facts and circumstances of the case the marriage of the wife has become empty shell and when she has been deserted for such long period of about more than seven years, thereafter, now she cannot be forced to go to her husband's house for facing the same situation for which she is neither mentally nor physically prepared. It has been stated on behalf of the appellant that desertion cannot be proved as it was, in fact, the wife who has left the matrimonial home and desertion has not been proved even in the matrimonial case filed by her.

However, in view of the fact that the decree of

dissolution of marriage has been passed on the ground of cruelty and that has been upheld in M.A. No. 178 of 2011 now there would be no question of granting a decree of restitution of conjugal life under Section 9 of the Act.

Accordingly this appeal is dismissed.

However, there would be no order as to costs.

(Dr. Ravi Ranjan, J)

(Ramesh Kumar Datta, J) I agree.

(Ramesh Kumar Datta, J)

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