

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.351 of 2013

=====

Amrendra Kumar S/O Moti Lal Yadav Resident of Village West Azimganj, P.S.
Haveli Kharagpur, District Munger.

.... Petitioner Appellant

Versus

Ranju Kumari D/O Late Bishwanath Singh W/O Sri Amrendra Kumar Resident of
Sector 9/C Gali No. 25, Quarter No. 741 Bokaro Steel City, P.S. Bokaro, District
Bokaro.

.... Respondent.... Respondent

=====

Appearance :

For the Appellant/s : Mr. M. N. Parbat, Sr. Advocate with
Mr. Abhay Kumar Singh and
Mr. Sanjay Kumar Jha, Advocates

For the Respondent/s : Mr. Ram Shresh Roy, Sr. Advocate with
Mr. Binod Kumar Singh, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

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

Date: 24-04-2015

Heard learned counsel for the appellant and the
respondent.

2. Husband is the appellant. He has filed this



appeal assailing the judgment dated 02.04.2013 passed by Principal Judge, Family Court, Munger in Title Suit (Matrimonial) No. 89 of 2009, refusing dissolution of his marriage with the sole respondent. In the petition filed under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act') on 21.07.2009 therein the petitioner asserted with reference to the facts stated that his marriage with the sole respondent be dissolved on the grounds of adultery, desertion and cruelty. The facts asserting the three grounds has however not been proved.

3. While challenging the judgment, learned counsel for the appellant submitted that in appeal also he is not seriously pressing the grounds of adultery and desertion as from the facts pleaded itself it is evident that the allegation constituting the charge of adultery was withdrawn deleting the name of respondent Mr. Amit Kumar, from the petition. As regards ground of desertion, learned counsel submitted that from the plaint itself it will appear that the same was filed on 21.07.2009, that is, within two years of marriage solemnized on 24.11.2007, as such, the ground of desertion was also not made out on the date of filing of the plaint. Learned counsel for the appellant husband in support of the appeal pressed the ground



of cruelty which is also not proved according to the court below as from the plaint itself it will appear that husband filed Title Suit No. 138 of 2008 under Section 9 of the Act on 17.10.2008 for restitution of conjugal rights with the respondent and the facts stated in the plaint filed under Section 13 of the Act on 21.07.2009 does not contain any allegation subsequent to the date of filing of Title Suit No. 138 of 2008 i.e., 17.10.2008, the court below having taken note of the said fact did not consider the contents of petition dated 19.01.2009 filed before Women Commission and allegations levelled in Complaint Case No. 26 of 2009 filed by the respondent on 21.07.2009 but according to learned counsel if those assertions and facts as alleged in the petition dated 19.01.2009 and complaint Case No. 26 of 2009 filed on 21.07.2009 are seen by this Court, this Court will be satisfied that the respondent has been cruel to her husband. It is submitted that both the aforesaid documents, that is, petition filed before the Women Commission on 19.01.2009 and the petition of Complaint Case No. 26 of 2009 (Exhibit 13) filed on 21.01.2009 were made exhibit in the suit and according to learned counsel, learned Principal Judge should have considered the allegations set out in both the aforesaid documents and to have recorded a finding that wife was



levelling unfounded allegations against the husband and thereby she was cruel to him. In support of the submissions, learned counsel placed reliance on a decision of the Hon'ble Supreme Court in the case of **K. Srinivas Rao v. D. A. Deepa** reported in **(2013) 5 SCC 226**. In this connection, we take note of the finding recorded by the Principal Judge in paragraphs 19, 23 of the judgment which is quoted below for ready reference:

“19.In regard to the allegation of cruelty he submits that petitioner has not made any specific allegation of cruelty with date, place, and nature of the cruelty. He further submits that before filing the present divorce petition, the petitioner husband had filed Matrimonial Suit bearing T.S. No. 138/08 u/s 9 of the Hindu Marriage Act on 17/10/2008 in this court for restitution of conjugal right and as such that amounts to condonation of all the matrimonial offences, if any, committed by the respondent against the petitioner and in the present divorce petition there is no allegation of cruelty or adultery subsequent to the aforesaid date of 17/10/2008 i.e. date of filing of the above matrimonial suit for restitution.

23. Even in regard to cruelty, I find that petitioner has not pleaded any specific instance of cruelty which date, place and nature of



cruelty committed by the respondent against the petitioner. In regard to cruelty, I find that petitioner has pleaded that respondent did not listen to the request of the petitioner to live at ancestral house to take care of the old parents and instead she insisted to go to Delhi with the petitioner husband. Here it is relevant to say that insistence of a wife to live with her husband is nothing but natural and it cannot amount to cruelty. Petitioner could have taken his parents along with himself at Delhi to take care of them. It could not be expected from a newly married wife to forgo her conjugal life and stay at ancestral house to take care of parents. Hence, such allegation even if found to be true can not be treated as cruelty on the part of the respondent towards petitioner or his parents. The petitioner has also alleged that during the stay at Delhi the respondent did not share bed with the petitioner but the petitioner has pleaded in his matrimonial suit for restitution of conjugal right that after coming from Delhi he cohabited from 3/7/08 to 07/08/2008. As such, the petitioner has condoned the respondent-wife the denial of cohabitation if any. As far as allegation that respondent has gone to Bokaro and she flatly refused to come back to matrimonial home is also not found to be true as per the evidence on record because I find that wife is all along



willing to live with the petitioner and she has been living at matrimonial home of the petitioner at west Azimganj and it is the petitioner who is not coming to live with her. Hence there is no fault on the part of the respondent for non-cohabitation. It has further come on record that mother-in-law of the petitioner tried to oust the respondent from the matrimonial home at West Azimganj forcefully and hence even a criminal case has been lodged by the respondent against her bearing Kharagpur P.S. Case No. 61/10 u/s 341, 323, 379 I.P.C. Moreover, the petitioner has not prosecuted his restitution case till the logical end and he preferred to withdraw the same in the midst of the proceeding. As far as allegation that on account of ill treatment of respondent, the father of the petitioner got paralysis and mother of the petitioner developed heart problem is also bereft of substance, firstly, because there is nothing on record to conclusively prove that father of the petitioner has suffered from paralysis attack and mother is having heart problem. As per the witnesses examined on the part of the respondent who are villagers and relatives of the petitioner himself, father of the petitioner is healthy man and as per the evidence of the respondent, parents of the petitioner being old, they frequently visit Delhi for routine check

up. There is also nothing on record to establish direct relation between the conduct on the part of the respondent and ailment suffered by the parents of the petitioner. In view of the totality of the evidence on record it appears that parents of the petitioner are old and they may have old age ailments. As such, petitioner fails to prove even the allegation of cruelty against the respondent. Hence, this issue is also decided against the petitioner and in favour of the respondent.”

4. In view of the findings recorded by the Court below we are of the opinion that the plaint filed in the instant case on 21.07.2009 did not contain any allegation made after 17.10.2008, the date of filing of suit for restitution of marriage dated 17.10.2008, in the circumstances, the Court below was absolutely justified in not taking into account the allegations leveled in petition dated 19.01.2009 and complaint case no. 26/09 dated 21.07.2009. It is necessary to point out that respondent wife after being thrown out from the Delhi residence of her husband is residing in the Haveli Kharagpur residence of her in laws without any support from them even after electric connection of the house was snapped. It is relevant to note that when the appellant and his family members got bail in the Complaint Case No. 2026C of 2009,

the respondent was beaten up and attempt was made to evict her from the matrimonial home, where she had been living after being evicted from Delhi by the husband, she had lodged Kharagpur P.S. Case No. 61 of 2010 which cannot be a ground of cruelty as the complaint was lodged in self defence. The facts of the case in hand has no resemblance with the case law decided by the Hon’ble Supreme Court and relied upon by the counsel for the appellant.

5. From the fact stated in the impugned judgment, we are satisfied that the respondent-wife is on the receiving end right from the beginning and has not been given a single farthing as maintenance, litigation cost till date, as such, while dismissing the appeal, we award exemplary cost of Rs. 100000/- (One Lac).

(V.N. Sinha, J)

(Ahsanuddin Amanullah, J)

Anjani/-

U		T	
---	--	---	--