

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.277 of 2014

Vijay Kumar Mishra, son of Late Lakhraj Mishra, resident of village -
Karnamepur, P.S. Shahpur, District - Bhojpur, Presently c/o Jagarnath Prasad
Gupta, Judge Bazar Biha, Thakurbari Road Biha, District - Bhojpur

.... Appellant/s

Versus

Durgawati @ Divya Devi wife of Vijay Kumar Mishra, Daughter of Ramesh
Pandey resident of Karnamepur, P.S. Shahpur, District - Bhojpur At present
residing at village - Brahampur Next Street of Sapna Studio, District - Buxar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Ashok Kumar Singh, Advocate
Mr. Anant Kumar Pandey, Advocate
For the Respondent/s : Mr. Ashok Kumar Mishra, Advocate
Mr. Varun Kumar, Advocate
Mr. Pratibha Shrivastava, Advocate

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

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

Date: 12-05-2015

Heard learned counsel for the appellant and the counsel for
the respondent. Appellant-husband and respondent-wife are also
present.

2. This appeal has been filed by the husband assailing the
judgment dated 26.03.2014 passed by Principal Judge, Family Court,
Bhojpur at Ara in Matrimonial Case No. 47 of 2010 whereunder
petition under Section 13 of the Hindu Marriage Act filed on behalf of
the appellant-husband seeking decree of dissolution of marriage with

the sole respondent on the ground that she was cruel to the husband has been rejected holding that the ground of cruelty is not made out in the light of the evidence of the parties.

3. In support of their case, appellant, respondent examined four, three witnesses respectively including the parties themselves. The court below considered the ground of cruelty in paragraph 7 of the impugned judgment and having appraised the evidence led by the parties found the ground of cruelty not made out as none of the witnesses claimed that in his presence respondent-wife ever abused the appellant-husband. The other fact asserted in support of the ground of cruelty that the wife did not come to attend the husband when he met with an accident is also not proved as from the evidence of the parties, it appears that after learning about the factum of accident, respondent-wife did send her brother to enquire about the well being, the appellant-husband and his family members asked the brother to go back as the husband was alright. The court below having appraised the evidence has come to such finding.

4. In the light of the submission made on behalf of the parties, we also spoke to the appellant and respondent both separately as also in presence of each other.

5. To us, it appears that there may have been some



misunderstanding between the parties but wife submitted unconditional apology in our presence asking the husband to forgive her for whatever disrespect she may have shown in the past, as in future she will grant him the respect to which he is entitled to and thereby not only the parties but also their son shall have a better life. In the light of the aforesaid apology the respondent also volunteered to withdraw the proceedings arising out of Brahampur P.S. Case No. 179 of 2010 registered for the offence under Section 498A and other allied sections of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act which is, accordingly, quashed.

6. Having gone through the impugned judgment, we are satisfied that no ground for passing a decree of dissolution of marriage between the parties is available on record and we are further reinforced in our views by the subsequent conduct of the wife that she has chosen to withdraw the aforesaid criminal case lodged against the appellant-husband and the in-laws as goodwill gesture to them so that she and her seven years old son may again unite with the husband and the family.

7. The appeal is dismissed with direction to the respondent-wife to reside in her matrimonial home in village Karnamepur, P.S. Shahpur, District Bhojpur along with her son. It shall be the

responsibility of the appellant to maintain the two while they reside at his village home so that child may continue with his studies. Arrears of maintenance amount shall also be paid to the respondent-wife within a period of five months from today, but the current maintenance amount must be paid to her on 15th day of every month.

(V.N. Sinha, J.)

(Nilu Agrawal, J.)

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