

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1225 of 2012

IN

Civil Writ Jurisdiction Case No. 5948 of 2012

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Bipin Bihari Manjhi, S/O Shambhu Manjhi, R/O Village-Kothiyan, P.S.-
Autarnagar, District- Saran. Appellant.

Versus

Ratan Kumari, D/O Ramdeo Paswan, W/O Bipin Bihari Manjhi, R/O Mohalla-
Gangjala, Ward No. 20, Kabir Chowk, P.S. & District- Saharsa.

.... Respondent.

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Appearance :

For the Appellant : Mr. Shashi Shekhar Dvivedi, Sr. Adv.
Mr. Ranjan Kumar Dubey, Adv.

For the Respondent : Mr. R.C. Thakur, Adv.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 21-07-2015

Heard learned counsel for the appellant, learned
counsel for the contesting private-respondent and with their
consent, this appeal is being heard for final disposal at this stage
itself.

The issue before this Court in this Intra-Court
appeal is, whether the evidence recorded by the Principal Judge,
Family Court, Madhepura of the appellant, who was the
applicant in Matrimonial Case No.02 of 2007, being divorce
proceedings as against the sole-contesting respondent, is correct
or not.

Learned counsel for the appellant has drawn our

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attention to the evidence as recorded on 18.12.2008 wherein the appellant had clearly written while signing the deposition that it is being signed under protest. It is unfortunate that such a situation should come. It is more unfortunate that it comes from a Court which is of the level of the District Judge. The reason is simple. Under the Family Courts Act, the Court is required to make a summary recording of evidence unlike other Courts where verbatim evidence is taken down. In this summary recording what is being recorded is the learned Judge's perception of the statements made. They may be correct. They may be incorrect. The moment a witness reads it and protest that it is not correct recording of the evidence, it lay upon the Judge immediately at that moment to cancel what he has recorded and record verbatim the statement. This is only to avoid controversies because doing otherwise the Court and the Judge is dragged into controversies.

It appears that ultimately in the year 2012, after the change of the officer, again the writ petitioner/appellant made an application. The learned Judge merely said that what was recorded is correct. We fail to understand how the successor Court can say what his predecessor has recorded was right in spite of the fact that at the time of recording itself on the

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record the writ petitioner/appellant had protested. It would be a travesty of justice to allow such evidence remains on record.

We, therefore, direct that the evidence of the writ petitioner/appellant, as recorded on 18.12.2008 in Matrimonial (divorce) Suit No.02 of 2007, be struck off and the writ petitioner/appellant be examined afresh. As the matter has become controversial in relation to recording of evidence, under these circumstances, the learned Family Judge would ensure that in this particular case depositions are recorded verbatim in the larger interest of justice. As the case has already lingered for 8 years without much progress and being a matrimonial matter, this Court would request the Family Court to expedite the proceedings so as to conclude the same preferably within one year. Both parties would cooperate in the matter.

Accordingly, the order dated 29.06.2012 passed by the learned Single Judge is set aside and the appeal is allowed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

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