

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.778 of 2010

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Nuzhat Jahan daughter of late Shamim Ahmad, resident of Federal Colony, Isopur,
Phulwarisharif, P.S. Phulwarisharif, District Patna

.... Opp. Party.... Appellant

Versus

Sri Perwaz Alam son of Sri S. M. Farooque, resident of Mohalla Khan Bahadur
Road, Jehanabad, P.S. Jehanabad, District Jehanabad at present residing at Bihar,
Police Lines, Samastipur

.... Applicant Respondent

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Appearance :

For the Appellant : Mr. Arshad Jameel Hashmi, Advocate

For the Respondent : Mr. S. Jamil Akhtar, Advocate

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

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

Date: 19-02-2015

Heard learned counsel for the parties.

2. Mr. S. Jamil Akhtar appears on behalf of the respondent-husband and states that after he filed vakalatnama on behalf of the respondent-husband, the file has been taken away by his client-husband and he has no instruction to appear in opposition to this Appeal.

3. Husband-respondent having not made any alternative

arrangement to place his point of view in opposition to the present Appeal, we have no option but to proceed with the Appeal.

4. Appellant-wife by filing this Appeal has assailed the order and decree dated 20th August, 2010 passed by the Principal Judge, Family Court, Jehanabad in Matrimonial Case No. 70 of 2009 whereunder the request of the applicant-husband to direct the opposite party-wife to live with the husband until she get dissolved her marriage with the applicant-husband under Section 2 of the Dissolution of Muslim Marriages Act, 1939, has been challenged by filing the present Appeal.

5. It is submitted on behalf of the appellant-wife that suppressing the fact that the husband contracted another marriage without her consent, the present petition for restitution of conjugal rights was filed. By appearing in the proceeding before the court below she informed the court below about the aforesaid fact but the court below without taking note of the said fact has allowed his request for restitution of conjugal rights only on the ground that marriage of the appellant with the applicant-husband has not been dissolved and until her marriage with him is dissolved, the husband is entitled for decree of restitution. The second marriage of the husband is the cause for wife not to co-habit with her husband. Such second marriage itself has taken place without obtaining permission/consent

or even informing the wife about the same.

6. In the circumstances, the wife has chosen not to resume conjugal life with the husband. In our opinion, she was absolutely right.

7. Having recorded the aforesaid finding, we set aside the order and decree dated 20th August, 2010 passed by the Principal Judge, Family Court, Jehanabad in Matrimonial Case No. 70 of 2009 with direction to the husband to pay 50 per cent of his salary per month to the wife by 10th of every month in the court where the suit for divorce is pending, failing which the court will take coercive steps against the husband for ensuring such payment.

8. Appeal is allowed.

(V.N. Sinha, J)

(Ahsanuddin Amanullah, J)

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