

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.791 of 2012

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Dilip Kumar Choudhary S/o late Anirudh Prasad Choudhry, R/o village – Jabra,
P.S. Baunsi, District - Banka

.... Petitioner/Appellant

Versus

Pramila Devi W/o Dilip Kumar Choudhary, D/o Kamleshwari Choudhary, R/o
Village Chirauta, P.S. Belhar, Dist. Banka

.... Defendant/Respondent

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Appearance :

For the Appellant/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

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

Date: 28-04-2015

Having considered the averments made in I.A. No. 4460
of 2013, we condone the delay in filing the present appeal.

2. I.A. No. 4460 of 2013 is allowed.

3. Husband is the appellant. He has filed this appeal
assailing the impugned judgment dated 13.09.2012 passed by 1st
Additional District Judge, Banka in Matrimonial Case No. 9 of 2005
whereunder his suit for divorce filed under Section 13 of the Hindu
Marriage Act, 1955 on the ground of cruelty and adultery has been
dismissed.

4. The ground of cruelty failed because no concrete
instance of wife being cruel to the appellant- husband could be
asserted and proved. The charge of adultery failed as the person with
whom wife was in adultery was not even impleaded as party-
respondent in the case. The court below having framed four issues in

paragraph 4 of the impugned judgment recorded finding with respect to each of the issues, namely, adultery in paragraph 6 and held that appellant did not deposit the cost of D.N.A. test to be performed on his two sons who according to the appellant has been fathered by one Bhola Choudhary with whom wife had illicit connections, the court below rejected the ground of adultery. Specific instance of cruelty having not been pointed out, only general allegation made that there used to be hot altercation between the couple cannot establish cruelty on the part of the wife.

5. I see no reason to interfere with the impugned judgment. The appeal is dismissed.

6. It is submitted on behalf of the appellant that he has been ordered to pay maintenance amount of Rs. 2,000/- per month in the present proceeding, which he has been regularly depositing in the court below.

7. Let the court below ensure that respondent-wife is allowed to withdraw the amount of maintenance deposited by the appellant-husband on regular basis.

(V.N. Sinha, J.)

(Nilu Agrawal, J.)

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