

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.669 of 2013

=====

Smt. Malti Devi, W/O Vinod Kumar Upadhyay, Resident of Village- Osaon, P.S- Karakat, (Kachhawan), District- Rohtas (Bihar)

.... Appellant/s

Versus

1. Vinod Kumr Upadhyay S/O Late Sahjor Upadhyay, Resident of Village- Mangraon, P.S- Nasariganj (Kachhawan), District- Rohtas (Bihar)
2. Sri Bhagwan Chaubey, S/O Late Ram Subhag Chaubey, Resident of Village- Rasen, P.S- Rajpur, District- Buxar (Bihar)

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Dhanendra Chaubey, Advocate

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

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

Date: 02-07-2015

Heard learned counsel for the appellant.

2. Appellant is the wife. She has filed this appeal assailing the judgment dated 29.06.2013, passed in Matrimonial Suit No. 38/02 whereunder her marriage with respondent no. 1 has been dissolved as the court below found her to have deserted the husband for more than two years before filing of the divorce case. The findings recorded in connection with issue no. 3 framed to consider the allegation of desertion has been considered in paragraph 8 of the impugned judgment and the court below having considered the evidence of P.Ws. 2, 3 and O.P.W.-2, who is the brother of the



appellant and has admitted the fact that his sister is living at her Naihar from 1990 has decided the said issue in favour of husband. It is submitted that the aforesaid finding is contrary to the pleadings made in the petition filed by the husband, Annexure-1 paragraphs 6, 7. Learned court below held that the wife deserted the husband with reference to the evidence of her brother O.P.W.-2 and that being the position any pleading made otherwise is hardly of any consequence.

3. Learned counsel for the appellant in support of his submission has relied on the judgment of the Supreme Court in the case of ***Ramchander v. Ananta 2015(2) PLJR 416(SC) paragraphs 10, 11 to 15, 16***. Perusal of said judgment, however, indicates that the facts asserting desertion has been noted in paragraph 16 of the judgment, as such, other paragraphs referred to by the learned counsel for the appellant is not being referred herein. It is submitted that the facts of the present case and the evidence of O.P.W.-2, brother of the appellant clearly indicate that the wife has been living separately and away from the husband from 1990 and the court below in paragraph 8 has recorded the finding that parties are not cohabiting with each other from 1993.

4. In view of the evidence of O.P.W.-2, we are of the view that the finding recorded by the court below in paragraph 8 is not erroneous. Learned counsel for the appellant then referred to the

judgment of the Supreme Court in the case of ***R. Balasubramanian v. Smt. Vijayalakshmi Balasubramanian 1999(3) PLJR 8 (SC)*** and two other judgments of this Court in the case of ***Om Prakash Singh v. Smt. Rekha Devi and others 1992(2) PLJR 390 and Mandeep Dubey v. Smt. Shushma Devi 1993(2) PLJR 63*** which hardly has any application to the facts of the case.

5. The facts of the present case and the findings recorded by the court below in the light of the evidence adduced by the parties does not make out any case for interference by this Court. The appeal is dismissed.

6. In view of the findings recorded above, there is no point in condoning the delay in filing the appeal. Limitation petition is also dismissed.

(V.N. Sinha, J)

(Nilu Agrawal, J)

Rajesh/-

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