

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No. 823 of 2012

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Pushpa Kumari W/O Tripurari Prasad and Daughter of Mahendra Prasad R/O
Village- Aijhi, P.O.-Mubarakpur, P.S.-Korma, District- Sheikhpura.

....Respondent/s / Appellant/s

Versus

Tripurari Prasad S/O Shri Ghanshyam Prasad R/O Village-Aijhi, P.O.-
Mubarakpur, P.S.-Korma, District-Sheikhpura, At Present Residing at House of
Dwarika Mahto, Chak Musallahpur, Sweet Heart Lane, P.O.-Mahendru, P.S.-
Kadamkuan, District-Patna.

.... Petitioner/s / Respondent/s

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Appearance :

For the Appellant/s : Mr. Birendra Kumar, Advocate

For the Respondent/s : Mr.

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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: 23-04-2015

Before proceeding to consider the merit of the appeal challenging ex-parte order dated 27.07.2012 granting divorce in terms of Section 13 (1) (3) of the Hindu Marriage Act, 1955, we would like to mention that this appeal was filed on 23.11.2012 and since then till date all efforts to serve the notice of these proceedings on the respondent-husband in village Aijhi, P.O. Mubarakpur, P.S. Korma, District- Sheikhpura and present address in the house of Dwarika Mahto, Chak Musallahpur, Sweet Heart Lane, P.O. Mahendru, P.S. Kadamkuan, District- Patna failed as every time postal peon, process server reported that both the houses are found locked. Effort to serve the notice through process server, postal department failed, this Court asked the Superintendent of Police, Sheikhpura, Senior

Superintendent of Police, Patna to get the notice served on the respondent-husband through the concerned police station but both the police stations have also reported the same thing.

2. Counsel for the appellant informed us that respondent-husband has filed Criminal Miscellaneous No. 36758 of 2013 in this Court praying inter alia to grant him bail in the event of arrest through Shri Ranjeet Kumar, Advocate bearing A.O.R. No. 05793.

3. Having learnt the aforesaid fact, we requested the counsel for the appellant to contact Shri Ranjeet Kumar, Advocate, request him to appear on behalf of the husband in these proceedings, whereafter counsel for the appellant informed us that Shri Ranjeet Kumar has given up practice and the criminal miscellaneous application filed by the respondent-husband is being pursued by Shri Sanjeev Kumar, advocate Civil Court, Patna and also provided his mobile number i.e., 7870021737 and then we requested through counsel for the appellant to contact Shri Sanjeev Kumar on the aforesaid cell number but Shri Sanjeev Kumar did not choose to appear in these proceedings.

4. In these circumstances, we are satisfied that it is not possible to serve notice of these proceedings on respondent-husband. In the aforesaid background we thought it appropriate to go through the ex-parte order of divorce and having found the same to be not in accordance with law and has

been passed without taking adequate steps for ensuring service of notice of the proceedings taken in the Court below on the wife.

5. Accordingly, we set-aside the impugned judgment and order dated 27.07.2012 as also decree dated 30.07.2012 and remand the matter back to the Principal Judge, Family Court, Patna directing the appellant to appear in the Matrimonial Case No. 799 of 2010.

6. Let the appellant-wife appear in the Court of the Principal Judge, Family Court, Patna in Matrimonial Case No. 799 of 2010 within two weeks from today whereafter the Principal Judge, Family Court, Patna shall issue notice to the respondent-husband and consider his case on merit afresh.

7. The appeal stands allowed.

(V.N. Sinha, J.)

(Ahsanuddin Amanullah, J.)

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