

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.83 of 2015

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Sneha Kumari, W/o Ajit Kumar, Resident of Mohalla Mahuri Tola Post and police Station Silao, District Nalanda. At present residing with her father namely Shanker Prasad, tenant in the house of Sri Parshuram Prasad, Bank of Baroda Gali, Swarajpuri Road, Police Station Civil Lines, District Gaya.

.... Appellant/s

Versus

Ajit Kumar, S/o Brijnandan Prasad, Resident of Mohalla Mahuri Tola, Police Station Silao, District Nalanda.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dharendra Pratap Singh, Advocate

For the Respondent/s : Mr.

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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: 16-08-2016

Heard learned counsel for the appellant in respect of I.A. No. 2584 of 2015 as filed in this appeal for condoning the delay of about nine months in filing the appeal. Even though the explanation given does not constitute sufficient cause to condone the delay in filing the appeal, I.A. No. 2584 of 2015 is being allowed.

We have heard learned counsel for the appellant on the merits of the appeal. The appeal is directed against the judgment and decree dated 11.04.2014, passed in Matrimonial Case No. 95 of 2012 filed by the sole respondent herein. The said matrimonial case was filed for restitution of conjugal rights. It was



alleged that the parties having been married, the appellant lived in Silao, a rural area for some time, and thereafter went back to her parental house in Gaya. From time to time she was persuaded to come back but she refused either to serve the husband or to look after the old aged father-in-law and mother-in-law. She refused to stay in Silao which was a rural area and wanted to coerce her husband to abandon his parents and move to Gaya. Ultimately, she refused to come back to Silao from her parental house in Gaya. Accordingly, the case under Section 9 for restitution of conjugal rights was filed. Notices were sent by ordinary process, registered post and when it could not be served by any other means, notices were issued in newspaper, circulated in Gaya as well, still there was no appearance on behalf of the appellant. The Court, thus, proceeded ex parte. The respondent-husband led evidence but in absence of defendant-appellant, there was no cross-examination. On the pleadings and the evidence, the Court being satisfied that the wife had without reason deserted the husband, the judgment and decree for restitution of conjugal rights was issued. The appellant states that subsequently in maintenance case when this order was shown, she came to know about the decree but instead of filing an application in terms of Order IX Rule 13 of the Code of Civil Procedure for recalling ex parte judgment and decree of the court below, she found convenient to move a substantive appeal in the High

Court, which we find surprising. The ex parte judgment and decree is of the Principal Judge, Family Court Nalanda at Biharsharif which is mid-way between Gaya and Patna being closer to Gaya. In our opinion, why this appeal has been filed, is only to linger the litigation because if the appeal is heard and finally allowed, the only order that can be passed, is setting aside the ex parte order and ordering rehearing of the matrimonial case for restitution. That would take quite some time but an application under Order IX Rule 13 could be taken up and decided by the court below within no time and the main case could have been taken up immediately.

Having considered the entire matter, we are not satisfied that the appellant did not have notice of this. She had chosen to abstain from the proceedings and as a consequence thereof she has now suffered an ex parte judgment and decree, which judgment and decree, on the facts as noted in the order under appeal, does not require any interference. This appeal is, accordingly, dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh

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