

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.76 of 2015

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Dr. Sulochana Kumari. Wife of Dr. Priya Ranjan Bhaskar, D/o Sushil Kumar @ Sushil Kumar Yadav. Resident of Village - Harischandrapur, P.S.- Jalalgarh, District - Purnea.

.... Appellant

Versus

Dr. Priya Ranjan Bhaskar. Son of Amol Ray. Residing at Madhepura Om Bhawan, Singheshwar Road, Ward No. 01, Madhepura, P.S.- Madhepura, District - Madhepura.

.... Respondent

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Appearance :

For the Appellant/s : Mr. Durgesh Nandan, Advocate

Ms. Manisha Prakash, Advocate

For the Respondent/s : Mr. Tuhin Shankar, Advocate

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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: 23-08-2016

Interlocutory Application No. 2184 of 2015 has
been filed for condonation of delay.

Delay in filing the appeal is condoned.

It is a strange application purported to be an
appeal under Section 19(1) of the Family Courts Act. From
the final order of the Principal Family Judge, Purnea, the
appellant is the wife, who was the sole contesting respondent
before the court below. The applicant before the Family
Court was the husband.

It is not in dispute that the marriage between
the parties took place on 06.05.2009. Both are doctors and



both are in government service. Soon after the marriage, on 22.03.2010, divorce application was filed by the husband/respondent. This was opposed tooth and nail by the wife on the ground that divorce application was not maintainable in terms of Section 14 of the Hindu Marriage Act, having been filed within one year of the marriage. Initially, it appears that the divorce case was filed before the Principal Judge, Family Court, Madhepura. Wife then moved this court by MJC No. 2613/2011 which was disposed of by order dated 24.01.2012, transferring the suit from Family Court, Madhepura to Family Court, Purnea to proceed in accordance with law. This was registered as Matrimonial Suit No. 11/2010/48/2012 in the court of Principal Family Judge, Purnea. After hot contest, on 08.10.2012, the learned Principal Judge, Family Court upheld the contention of the wife that the divorce application was premature in terms of Section 14, and hence, not maintainable. Strangely enough, the learned Judge making a reference to the order of this Court dated 24.01.2012 passed in MJC No. 2613/2011, as referred to above, then directed the parties to start adducing evidence having held the application to be not maintainable. We are simply surprised at the competence of the learned Judge. Now, the matter came up for evidence. After

sometime when parties led evidences, the plaintiff/husband moved an application seeking leave to withdraw the application for divorce in view of the fact that it was not maintainable. Leave was granted. The suit was decreed as withdrawn with cost to be paid to the respondent.

Now, again the appellant/wife is aggrieved. She has filed this appeal challenging the order permitting withdrawal of the matrimonial suit. Court fails to understand, when the suit is instituted, the wife challenges it for its maintainability. When the suit was withdrawn, she challenges its withdrawal. We would not like to comment further. Both are well educated medical doctors, wasting their time litigating with each other. If the two cannot live together peacefully it would be better for them to part ways peacefully and go on with their future. The two educated persons are fighting tooth and nail for over six years. We fail to understand why, and for whose benefit.

Learned counsel for the appellant submits that when the court proceeded with evidence and parties started leading evidences, then after evidences were led, the plaintiff ought not to have been permitted to withdraw the suit. Again, we are surprised. First, when the suit is instituted, the wife turned around and challenges its maintainability. When the

court held it is not maintainable then also the wife challenges it in appeal. Curiously, the orders directing evidence to be recorded in view of the High Court's order by the Family Judge which, as noted above, had nothing to do with this issue. Instead of challenging that part, wife participates in the proceedings. When finding that the suit was premature the husband withdraws the suit, she again has problem and objects to the withdrawal.

In our view, the plaintiff, who has instituted the suit, has a right to withdraw the suit. It is his suit, whatever consequences thereof, may follow. The defendant cannot insist upon the plaintiff to carry on the suit to its logical end. It is not a case of partition, that, once a partition suit is filed, there is a division claimed, and the plaintiff, if not inclined to pursue it further, defendant can transpose as plaintiff and carry on the suit.

Thus, we find no merit in the submission made on behalf of the appellant. This appeal is, accordingly, dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/N.A.F.R.

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