

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.450 of 2015

=====

Reena Devi, aged about 34 years, wife of Sri Rohit Bishnoi, present resident of Mohalla – Jamtara, G.T. Road, Near Parasnath College, village + P.O. + P.S. – Dumri, District – Giridih (Jharkhand).

.... Appellant

Versus

Rohit Bishnoi, son of Krishna Chandra Bishnoi, resident of Mohalla D.N. Das Lane, Bangali Akhara, Langar Toli, P.O. Bankipur, P.S. Kadamkuan, District & Town - Patna.

.... Respondent

With

Miscellaneous Appeal No. 271 of 2015

=====

Rohit Bishnoi S/o Krishna Chandra Bishnoi Resident of Mohalla D.N. Das Lane, Bangali Aghara, Langar Toli, P.O. Bankipur, P.S. Kadamkuan, District Patna.

.... Appellant

Versus

Reena Devi W/o Rohit Vishnoi, D/o Om Shankar Agrawal Resident of Village Dumari Jamtara J.T. Road Near Paras Nath College, P.O. Dumari, P.S. Dumari, District Giridih (Jharkhand).

.... Respondent

=====

Appearance :

(In MA No. 450 of 2015)

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

For the Respondent/s : None.

(In MA No. 271 of 2015)

For the Appellant/s : None

For the Respondent/s : Mr. Manoj Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 06-09-2016

Heard learned counsel for the appellant in M.A.

No. 450/2015. No one appears on behalf of the appellant in

M.A. No. 271/2015.

The two Miscellaneous Appeals arise out of the judgment and order dated 29.06.2015, passed by the Additional Principal Judge, Family Court, Patna, in Matrimonial Case No. 445 of 2010.

The case was instituted by Rohit Bishnoi, the husband, for dissolution of marriage under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as “the Act”). The sole contesting respondent, Smt. Reena Devi, was the estranged wife. Parties have appeared and led their evidence. The Court, upon consideration of the entire matter, granted the decree for dissolution of marriage by decree of divorce. While doing so, it noted that the parties were married on 06.03.2003, but within months there were serious differences, and since then, they have been living apart. The marriage has not been consummated, nor parties are inclined to forget the past and live together.

The two appeals that have been filed is against the part of the judgment, whereby and while granting the decree of divorce, the Family Court has granted Rs. 16,00,000/- (sixteen lacs) as permanent alimony in terms of Section 25 of the Act, to be paid by the husband to the wife.



Miscellaneous Appeal No. 450/2015 has been preferred by the wife challenging that permanent alimony, so fixed, is too little, whereas Miscellaneous Appeal No. 271/2015, as filed by the husband, is that, considering his status and his property, the alimony is strikingly high. Neither party had challenged the decree of divorce. Therefore, before us, the question is whether Rs. 16 lacs as fixed by the Trial Court is just and reasonable. The legal principles for fixing the permanent alimony are well settled and need not be discussed, but what is the evidence for the same is relevant. All that the wife can say is that the husband has a house in which there are some shops and live with parents on the first floor therein. Therefore, his status is very high and Rs. 16,00,000/- (sixteen lacs) is also very low. There is no evidence as to the valuation, or the other assets or the income of the husband. The husband, on the other hand, says that apart from the said property, which is old ancestral property, there is no income except rental income from those shops, and if he is asked to pay Rs. 16,00,000/- (sixteen lacs), he would first have to sell the entire property and then raise the money.

In our view, the first thing to be noted is that,

alimony has to be fixed upon cogent evidence to be led by the parties. It cannot be on *ad hoc* findings unsupported by materials on record.

In that view of the matter, there being hardly any evidence, we would set aside the matter and remand the matter to the Principal Judge, Family Court, Patna, only limited to the matter for determination of the quantum of alimony, in terms of Section 25 of the Act. So far as the decree of divorce is concerned, neither party having any objection, the same cannot be interfered with, and it would be deemed to have attained the finality.

Thus, both the appeals are allowed and the matter is remanded for fresh consideration by the Trial Court for the limited purpose as pointed out above. The Trial Court would be well advised to finalize the proceedings, preferably within six months.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/-

U			
---	--	--	--