

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.965 of 2011

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Piyush Kumar Jha, S/O Sri Arbind Kumar Jha, R/O Village - Baijani,
P.S. Jagdishpur, District - Bhagalpur

.... Appellant

Versus

Smt. Deisy Devi, D/O Prof. Baleshwar Jha, R/O Mohalla - Professor
Colony, Rajendra Nagar, Power House Road, Near Bus Stand,
Begusarai, P.S. Begusarai Sadar, District - Begusarai

.... Respondent

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Appearance :

For the Appellant : Mr. Subodh Kumar Jha, Advocate
Mr. Pranav Kumar Jha, Advocate

For the Respondent : None.

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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)

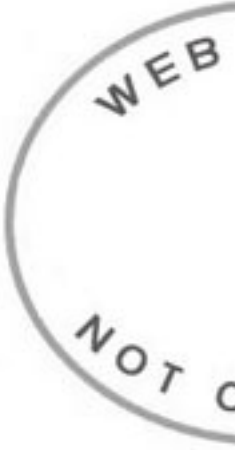
Date: 08-08-2016

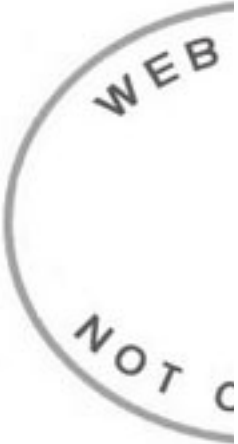
This appeal is against the judgment and order dated 24th October, 2011 passed in Matrimonial Case No. 144/2010 by the Principal Judge, Family Court, Bhagalpur, whereby the application filed by the petitioner/appellant was dismissed.

The sole respondent, before the court below and here in the appeal, is Smt. Deisy Devi. Notices were sent by all processes and ultimately upon her non-appearance there was paper publication as before the trial court also, as before this Court, but she has chosen not to appear.

It is under the aforesaid circumstances we have decided to hear this application finally at this stage itself.

Petitioner's case is that their marriage was solemnized on 22.04.2002 as per Hindu customary rights. After the marriage, the couple moved to the matrimonial home at village - Baijani, P.S. Jagdishpur, District – Bhagalpur where the marriage was consummated. The petitioner had a job at Delhi and accordingly he moved to Delhi, but the wife though assured would join him, having gone to her matrimonial home, refused to return. Several requests were made for restoration of conjugal relationship which was not responded to by the wife. To the contrary, the petitioner was threatened to be implicated in cases if he so insisted. Thus, effectively from 15.11.2004, the wife abandoned matrimonial relationship and the matrimonial house. Having waited for considerable time, in the year 2010 i.e. after six years thereafter, in order to continue with his wife, first, this case was instituted with a prayer in terms of Section 9 of the Hindu Marriage Act for restitution of conjugal rights. Having seen that the respondent was not appearing in the matter, in spite of newspaper publication and gathering her intentions, an amendment was sought for,





in terms of Section 13A of the Hindu Marriage Act, alleging that the petitioner had been deserted by his wife for a continuous period of over two (2) years and, it was a ground available for divorce in terms of Section 13(1)(i-b). Upon evidence being led by the petitioner/appellant and his father, P.W.2, both of whom clearly stated the date of marriage, the date of desertion and efforts to bring her back, Curiously, the Principal Family Judge noted all these facts but quite surprisingly dismissed the application merely holding that the evidence is not sufficient to prove the plea of desertion. We wonder what more evidence is required. The husband pleads desertion, the father of the husband corroborates the same. We fail to see what more was to be pleaded. The evidence being there of desertion and there being no contest, we wonder what more was required by the learned Family Judge for granting the relief as sought for.

We have heard learned counsel for the petitioner/appellant and perused the judgment and order.

From the records, it appears that even this court tried to get notice validly served on the respondent through the District Legal Services Authority and through all other known sources, but either the notices were avoided

to be received or evaded, ultimately a newspaper publication was done. Thus, the position is clear that for last twelve years the petitioner/appellant has had no conjugal relationship with the respondent and the respondent is not available or ready to be in matrimonial house. In other words, she has deserted without any reasonable cause. That being so, the conditions of Section 13(1)(i-b) are fully satisfied. Accordingly, this Court has no option but to allow this Appeal, set aside the judgment of the court below and grant decree of divorce on the grounds of willful desertion in respect of marriage as between the petitioner/appellant and the sole respondent, Smt. Deisy Devi.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/A.F.R.

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