

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.17 of 2016

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Akhilesh Kumar, son of Harendra Deo Bhakta, Aged about 26 years, permanent resident of village-Chanpatia, P.S. Chanpatia, District-West Champaran, presently residing at C/o Om Prakash Puri, House No. 11, State Bank Colony, Kurjee, Balupar, Post and P.S. Digha, District-Patna.

.... Appellant/s

Versus

1. Shivangi Chauhan, aged about 24 years, Daughter of Sri Suresh Chauhan,.
2. Suresh Chauhan, son of not known.
3. Rekha Chauhan wife of Sri Suresh Chauhan.
4. Vikash Chauhan, son of Sri Suresh Chauhan.
5. Keshav Chauhan, son of Sri Suresh Chauhan, all of the above resident of-115A, Gandhi Gram, P.S. Harjindra Nagar, Kanpur, District-Kanpur, (Uttar Pradesh).

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajeev Sah

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 19-04-2016

Heard Mr. Rahman, the learned counsel for the petitioner.

The present application under Article 227 of the Constitution of India has been filed by the petitioner questioning the rejection of the petition for grant of injunction by the learned court below where the prayer was made to restrain the defendants other than the defendant no. 1 from performing the marriage of the defendant no. 1.

The factual expose' are that the petitioner as plaintiff

filed Matrimonial Case No. 179 of 2016 before the Family Court, Patna seeking the relief for declaration that the petitioner and the opposite party no. 1 got valid married with each other as a result of freedom of their choices and for further declaration that the petitioner and the opposite party no. 1 were husband and wife. The prayer was also made for restitution of conjugal rights.

From the averments made in the plaint (Annexure-1), it is manifest that according to the petitioner, the opposite party no. 1 came in his contact while they were student in the year 2012 and had developed carnal relationship with each other. It has been averred that the said relationship continued with intervals at different places where the petitioner and the opposite party no. 1 went for their further study. On the basis of these averments, the claim has been made by the petitioner that both have acquired the status of husband and wife and are entitled to get declaration accordingly and the relief for restitution of conjugal rights against the parents of the opposite party who according to the petitioner have restrained the opposite party no. 1 from free movement including her continuing relationship with the petitioner.

The petition for injunction was filed by the petitioner when he became aware that the parents of the opposite party no. 1 including her brothers were going to perform the

marriage of the opposite party no. 1 on 22.04.2016. The learned court below has rejected the said petition and refused to grant injunction.

Mr. Rahman, learned counsel for the petitioner, in his astute manner, has tried to persuade this Court to hold that the petitioner and the opposite party no. 1 have been in live-in relationship and therefore they have acquired the status of husband and wife. Elaborating the background facts in detail, it has been propounded that the presumption of relationship between two adult male and female as husband and wife is necessarily to be raised when they are living together for long as such they are entitled to get the appropriate relief when they are restrained in living together onwards as husband and wife. Learned counsel has also relied upon several decisions of different High Courts including the decision in the case of **Aysha Vs. Ozir Hassan in Cr. R. C. No. 674 of 2007** of the Madras High Court as well as the decision dated 08.04.2015 of the Apex Court in the case of **Dhannulal Vs. Ganeshram in Civil Appeal No. 3410 of 2007** with **Civil Appeal No. 3411 of 2007** in support of his submissions.

After considering the submission and perusal of the materials on record, it is evident that the suit has been filed by the petitioner for getting the declaration of valid marriage between the petitioner and the opposite party no. 1 and for restitution of conjugal



rights. From the perusal of the plaint (Annexure-1), however, it does not appear that the basic and foundational facts in order to raise the presumption even of live-in relationship between the petitioner and the opposite party no. 1 have been averred. The Apex Court in the case of **Indra Sarma Vs. V.K.V. Sarma 2013 (15) SCC 755** after elaborately considering the issue of live-in relationship has laid down broad guidelines for testing under what circumstances a live-in relationship in the nature of marriage can be said to be in existence.

Those guidelines are as follows:

1. **Duration of period of relationship:** Section 2 (f) of the DV Act has used the expression “at any point of time”, which means a reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the fact situation;
2. **Shared Household:** The expression has been defined under Section 2 (s) of the DV Act and, hence, needs no further elaboration;
3. **Pooling of resources and financial arrangements:** Supporting each other, or any one of them, financially, sharing bank

accounts, acquiring immovable properties in joint names or in the name of the woman, long term investments in business, shares in separate and joint names, so as to have a long-standing relationship, may be a guiding factor;

4. **Domestic arrangements:** Entrusting the responsibility, especially on the woman to run the home, do the household activities like cleaning, cooking, maintaining or upkeeping the house, etc. is an indication of a relationship in the nature of marriage;
5. **Sexual relationship:** Marriage-like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring, etc.;
6. **Children:** Having children is a strong indication of a relationship in the nature of marriage. The parties, therefore, intend to have a long-standing relationship. Sharing the

responsibility for bringing up and supporting them is also a strong indication;

7. **Socialisation in public:** Holding out to the public and socializing with friends, relations and other, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature o marriage.

8. **Intention and conduct of the parties:**
Common intention of the parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship. Intention may be expressed or implied and what is relevant is their intention as to matters that are characteristic of a marriage.

The facts as stated in the plaint do not satisfy the aforesaid requirements to lead even to the inference of relationship between the petitioner and the opposite party no. 1 being in the nature of marriage. At the most it has been stated that the petitioner and opposite party no. 1 were having physical relationship while they were students or even thereafter at intervals. There is no statement

that they have been living together publicly as husband and wife and for a substantial duration and this fact was open and known to everybody in the society who have accepted them as such. Having physical relationship stealthily definitely cannot qualify to be a live-in relationship in the nature of marriage. Though the live-in relationship has not been defined but the same is in the nature of domestic relationship as defined in the domestic violence Act which has been considered by their lordship in the case of Indra Sarma (supra). The another significant fact is that though the relief has been prayed in the suit as against the parents and brothers of the opposite party no. 1 against whom the injunction has also been sought for but the opposite party no. 1 who is said to be an adult person has not joined the petitioner as plaintiff in the suit and there is no explanation in this regard except a specious plea that she has been restrained by her parents. There is also no averment that the opposite party no. 1 has taken any step to get such declaration or has approved or authorized the petitioner to file the suit with aforesaid reliefs. Considering the entire facts and circumstances of this case as well as the principles laid down by the Apex Court in the case of Indra Sarma, this Court does not find it a fit case requiring the interference in the impugned order under the supervisory jurisdiction under Article 227 of the Constitution of India.

This application is, accordingly, dismissed.

However, any observation in this order shall not prejudice the case of the petitioner on merits in the learned court below.

(V. Nath, J)

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