

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No 67 of 2013

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Smt Ekta Devi W/O Bijay Kumar Kyal, D/O Late Shaligram Khaitan Presently
Residing At Bank Road, Town, P.S. And District - Muzaffarpur

.... Appellant/s

Versus

Bijay Kumar Kyal S/O Bhagwati Prasad Kyal R/O 37, M.C. Road, Town, P.O.
And P.S. Raniganj, District - Burdwan (West Bengal)

.... Respondent/s

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Appearance :

For the Appellant/s : Mr Sunil Kumar No III, Advocate

For the Respondent/s : Dr Alok Kr Sinha, Mr Ranjan Kr Sinha &
Ms Seema, Advocates

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE MR JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 30-11-2016

Upon mention by the learned counsel for the appellant,
with the request for urgent hearing, this matter was taken up today.
We have heard learned counsel for the appellant and learned counsel
for the sole respondent at length. We have perused the records for the
purpose of finally disposing of this appeal.

2 This appeal has been filed under Section 19 of the
Family Courts Act, 1984 by the wife who was respondent in the Court
below. She is aggrieved by the judgment and order dated 15.12.2012
passed by the Principal Judge, Family Court, Patna in Matrimonial
Case No 338 of 2010 by which judgment and order, the marriage



between the appellant-wife and the respondent-husband has been dissolved on the ground of cruelty.

3 It appears from order dated 09.09.2015 passed in this appeal that the appeal having been filed in the year 2013, this Court made various efforts to bring about a reconciliation between the parties but in the end, the appellant-wife not willing for any settlement outside the Court, the appeal was directed to be heard on merit for its final disposal. This is how the matter has come up before us.

4 The brief facts may be noted hereunder:

5 The parties were married according to Hindu rites and customs on 13.12.1996 at Raniganj in the State of Bengal. After six years, in the year 2002, the couple were blessed with a daughter. On or about 12.02.2008, the appellant-wife left her matrimonial house with all her belongings. Immediately thereafter, the respondent-husband filed suit for dissolution of marriage before the Principal Judge, Family Court, Asansol which was later, as per directions of the Apex Court, transferred to Patna and, accordingly, registered as Matrimonial Case No 338 of 2010 at Patna.

6 In the application for dissolution of marriage, the husband had alleged cruelty. In the plaint itself, it is alleged by the husband that right from the time they were married, he had a tough time trying to reconcile and persuade the wife to have conjugal life. She was adverse to it as she had a pre-matrimonial relationship but



this was arranged marriage forced upon her. She used to be insulting and abusive with him and his relations including elders in the family. She used to even assault him and kept threatening that he and his family members would be implicated in false cases. In response to the suit so filed, the wife immediately filed case for the offence punishable under Section 498A of Indian Penal Code (for brevity *IPC*) and other criminal cases against the husband and his family members which was later quashed by this Court, though on the ground of territorial jurisdiction. Before the trial Court, wife filed a written statement, as is usual, making bald denial of the allegations. Issues having been framed, parties led evidence. On behalf of husband, his father, his brother and friend of elder brother were examined. Amongst exhibits, there were certain documents pertaining to mobile usage and conversation of the wife were exhibited. On behalf of wife, apart from herself, brother and nephew of the wife were examined. Upon examination of evidence, the trial Court came to a finding that the wife used abusive language towards not only the husband but elders in the family. It also accepted the evidence that the wife used to assault the husband. It noticed that soon after the matrimonial suit was filed, the wife retaliated with case for the offence punishable under Section 498A, *IPC* and other cases against the husband and family members. Court also noticed that the daughter of the parties, who was about six years of age when the



parties parted in the year 2008, in spite of efforts by the trial Court, refused to go anywhere near the mother and she feared the mother. The trial Court also noticed that though in the written statement, the wife brought no charges of adultery against the husband, in course of evidence, she started accusing the husband. She made serious allegations against the husband of adultery as a part of her defence against her abusive attitude. The trial Court, thus, found that the conduct of the wife was cruel and with such a behaviour towards the husband and his family members including elders, it could be held to be cruelty and was valid for dissolution of marriage.

7 We have already noted above that even by this Court, efforts were made for settlement. Unfortunately, the wife refused to do anything for an out of Court settlement and insisted upon the matter being finally decided on merit.

8 We have heard the parties and examined the evidences. Learned counsel for the appellant-wife submits that merely using abusive language towards the husband and elders and even occasionally assaulting the husband cannot be termed as cruelty. We respectfully disagree. If the husband abuses and assaults the wife, he would be liable to criminal charges but if what we have understood from the submission that if the wife does the same, then not only it is not a criminal offence but it does not also constitute cruelty, cannot be understood. Our society has not degenerated to such a level where a



lady of the house would have free mouth to abuse the elders with filthy abuses regularly and occasionally even assaulting her husband and to accept that would not constitute a cruelty cannot be accepted. Cruelty cannot be defined by any straight jacket definition. It depends upon various factors. Behaviour of one party to matrimonial alliance in a manner not compatible to the relationship and making it unworthy of peaceful conjugal life would constitute cruelty. Mere denial of allegation is not sufficient. We have no reason to take a different view of the matter on the evidence that was led before the trial Court which we have perused. We may only add, as has been noticed by the Apex Court in the case of *K Srinivas –Versus- K Sunita (2014) 16 Supreme Court Cases 34*, that the fact that the wife, after matrimonial case is filed, files case punishable for the offence under Section 498A, IPC against the husband and family members itself shows cruelty.

9 We failed to understand why such cases are advised to be filed from the side of the wife, after divorce is sought for by the husband, if not to trouble the husband. Wife should understand that once her husband or his relations are, pursuant to the allegations made by the wife, are taken into custody, whatever little chance of reconciliation there may be, is totally destroyed. In this case also, the same thing was done and it did not stop there. Even though in the written statement, the wife did not allege any immorality against the husband but when she came to depose in the Court, she made serious



allegations of immoral character, extra marital affairs against her husband. All this was beyond the pleadings and had no foundation. If we see all these things together, the conclusion is irresistible. The behaviour of the wife cannot be anything but cruelty.

10 We, thus, agree with the trial Court and, accordingly, dismiss this appeal.

11 However, before parting, we make it clear that the appellant is undoubtedly the mother of Divyansi Kyal, the daughter out of the wedlock. The daughter is about 14 years of age and stays with her father at Raniganj where she is being educated. The appellant would have a right to communicate with her first by letter and, if the daughter is willing, through mobile phone. If the wife, the appellant so desires, she would be allowed to visit the daughter at Raniganj with prior intimation and days convenient to all the parties but let it be noted that the daughter should not be made a pawn to settle scores of marital discord between the parties. In case of any difficulty in this regard, parties would be free to approach the Principal Judge, Family Court at Patna

12 Let the lower Court records be returned forthwith.

(Navaniti Prasad Singh, J)

(Jitendra Mohan Sharma, J)

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