

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.1212 of 2008

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Ramendra Kumar Sinha, Son of Late Umakant Prasad Sinha, Resident of Road No.5/A, Rajendra Nagar, P.S.-Kadam Kuan, District-Patna.

.... Petitioner.

Versus

Smt. Meena Sinha, Wife of Sri Ramendra Kumar Sinha, Resident of Savitri Bhawan Sanctum, G.B.Road, P.S.-Civil Lines, District-Gaya.

.... Opposite Party.

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Appearance :

For the Petitioner/s : Mr. Ramakant Sharma, Sr.Adv.
Mr. Rajesh Kumar, Adv.
For the Respondent/s : Ms. Mallika Mazumdar, Adv.
Mr.Prem Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 08-04-2016

V.Nath, J.

Heard Mr.Ramakant Sharma, learned senior counsel appearing for the petitioner and Ms. Mallika Mazumdar, learned counsel appearing for the opposite party.

By the impugned order in the present revision application the learned court below has turned down the prayer made on behalf of the petitioner for dismissing the suit in view of the averments made in the petition filed on 04.08.2007. The fact is not in dispute that the Matrimonial Title Suit No.05/2007 has been filed by the opposite party praying for a decree of divorce against the petitioner and also praying for grant of permanent alimony. The petitioner appeared in the suit and prior to the filing of his main reply, he filed a petition dated 04.08.2007 (Annexure-1) praying for



dismissal of the suit. It was the case of the petitioner as made out in the petition that earlier maintenance case no.46/2002 was filed by the opposite party and the same was disposed of in terms of the compromise between the parties by order dated 11.01.2005 (Annexure-3). It was also the case of the petitioner that in the said compromise petition there was clear acceptance by the applicant-opposite party regarding the payment and receipt of alimony from the petitioner and foregoing all her claims in future in this regard against the petitioner. It was precisely on the basis of this compromise that the present prayer was made by the petitioner in the matrimonial title suit for its dismissal. By the impugned order the learned court below has disposed of the said petition of the petitioner with direction to file written statement with further liberty to raise this matter as one of the main issues in the case.

Mr. Sharma , learned senior counsel appearing for the petitioner, has submitted that once after receiving the alimony from the petitioner and foregoing her claim in this regard in future, the plaintiff-opposite party has filed the present matrimonial title suit only with purpose to harass the petitioner and extract more money from him. By placing the order passed in the earlier maintenance case and the compromise petition filed therein it has been canvassed that these facts are sufficient to establish that the present matrimonial title suit

has been filed by the applicant-opposite party only with intention to vex the petitioner. The learned senior counsel has, however, accepted that no written statement has up-till-now been filed in the matrimonial title suit alleging the plea of bar of the claim of the applicant-opposite party on the basis of the earlier compromise as well as the order passed in the maintenance case on that basis.

Ms.Malika Mazumdar, learned counsel appearing for the opposite party has submitted that the petition filed by the petitioner in the matrimonial case was not maintainable as the facts which the petitioner has stated in the petition are still to be brought on record of the case by way of pleading and proved by evidence in accordance with law. It has also been contended that the learned court below has committed no error of jurisdiction or illegality in disposing of the petition filed by the petitioner granting the liberty to raise this issue as one of the main issues in the suit.

After perusal of the impugned order, considering the materials on record as well as the submissions on behalf of the parties, it is pellucid that the relationship between the petitioner and the opposite party as husband and wife is still subsisting. The earlier maintenance case was filed by the opposite party against the petitioner which according to the petitioner was dismissed in view of the compromise between the petitioner and the opposite party as



contained in the compromise petition filed in the said maintenance case. The present suit has been filed by the opposite party seeking a decree of divorce and for grant of permanent alimony against the petitioner. As the fact is not in dispute that the marriage between the petitioner and the opposite party is still subsisting, the matrimonial case for the prayer for grant of a decree of divorce cannot be said to be not maintainable. So far as another relief with regard to grant of permanent alimony is concerned the same is to be decided by the court after the grant of first relief and that too on the basis of pleadings and evidence of the parties. It is apparent from the impugned order passed by the learned court below that the entire facts and circumstances of the case has been fully considered and thereafter petition filed by the petitioner has been disposed of directing the petitioner to file his written statement and further granting him the liberty to raise the issue as one of the main issues in the suit. Even otherwise also accepting the entire contention of the petitioner to be true, the same relates only to the consequential relief prayed by the plaintiff in the matrimonial case and has no bearing upon the primary relief of divorce and therefore also the said case could not have been dismissed at the threshold as prayed by the petitioner.

For the aforesaid reasons and discussions, this Court finds that no error of jurisdiction or illegality has been committed by

the learned court below in passing the impugned order. The revision application is, accordingly, dismissed. However, it is observed that the petitioner shall be at liberty to raise all of his objections including the plea of estoppel as far as permissible in accordance with law in the matrimonial case.

(V. Nath, J)

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