

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.798 of 2013

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Navin Chandra Jha, son of Shiv Shankar Jha, resident of village -
Rasiyari, P.S.- Ghanshyampur, District - Darbhanga, at present residing
At- 111-2/3, Govindpur Government Housing Colony, Jamshedpur
(Tata), P.O.- Chota Govindpur, District- Shinghbhum (Jharkhand)

.... Appellant

Versus

Smt. Usha Devi, daughter of Late Triloki Nath Jha, resident of village-
Mahuar, P.S.- Ghanshyampur, District- Darbhanga.

.... Respondent

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Appearance :

For the Appellant/s : Mr. Krishna Nand Jha, Advocate

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

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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: 04-08-2016

The present appeal is directed against the
judgment and decree dated 21.11.2013 passed by Principal
Judge, Family Court, Darbhanga, in Matrimonial Case No.
109 of 2009, in so far as it relates to grant of alimony
under Section 25 of the Hindu Marriage Act.

While granting the decree of divorce which is
not under challenge and with which we are not interfering,
the learned Family Judge awarded Rs. 25 lacs to the
opposite party, wife, as one time permanent alimony to be

paid in five equal installments within six months. It is this part of the order which has been appealed against.

We have gone through the judgment and evidence that has been produced by the parties before us at the time of hearing and we find that the order in so far as it relates to grant of permanent alimony is totally unsustainable. Firstly, though the Family Court has the power and authority to grant permanent alimony, it does not mean that it could be any amount. The amount has to be based on evidence and has to be justified by reasons. We failed to understand how the Family Judge could have arrived at a figure of Rs. 25 lacs in relation to the husband who is the appellant here and who was the applicant before the Family Judge. As per the admitted case of the parties, wife asserted that the husband was working in Tata Company and earning an amount of Rs. 14,000/- (Fourteen Thousand only) per month and husband himself admitted that in fact his total emoluments were only Rs. 21,000/- per month. He had to support his old father, mother, second wife and child from second marriage. He is already 54 years old and there is no provision for any pension. We are at a loss to understand from where is the





appellant to raise this money. So far as liability of the Opposite Party, wife, is concerned, it is she alone with one daughter who is now of marriageable age. Both these interests have to be balanced. The Court cannot award alimony and leave it to the parties to find from where they can honour the same and it is for this reason we have said that alimony has to be based on some evidence.

In view of the aforesaid, there being no further evidence in this regard. We are constrained to hold that this part of the judgment and decree cannot be sustained and is accordingly set aside, to the extent indicated above the appeal is allowed.

However, in absence of any material before us, it is not possible for us to fix any amount. It will, therefore, be proper that we remand this matter to the Principal Judge, Family Court, Darbhanga who would notice the parties and ask the parties to lead evidence on the question of funds available or liable to be paid as alimony. There has to be a practical approach in the matter, but based upon evidence and materials.

We have just observed that if we are to uphold the alimony granted by the Family Court, from where

could the appellant pay the same. It has to be kept in mind the other liability of the appellant. Thus, while upholding the decree of divorce of marriage, we remand the matter back to the Trial Court to take decision on the alimony that is to be paid based upon the evidence led by the parties as the matter has dragged for almost a decade.

We would request the learned Principal Judge, Family Court, Darbhanga, to take up the matter urgently and decide the same within a period of six months. Parties are expected to cooperate in the matter to avoid any further delay. We direct that the parties should appear before the Principal Judge, Family Court, Darbhanga, on 29th August, 2016 and learned Family Court would fix a date for further proceeding in the matter, accordingly.

With this direction and observation, this appeal is partly allowed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/-

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