

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.534 of 2012

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Amrita Kumar @ Amrita Devi D/O Shambhu Rajak R/O Mohalla -
Kumarpur, P.O. & P.S. Bariyarpur, District - Munger

.... Appellant

Versus

Jyotish Kumar Rajak S/O Dashrath Prasad Rajak R/O Mohalla -
Babubank, P.S. Jhajha, District - Jamui

.... Respondent

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Appearance :

For the Appellant : Mr. Prashant Sinha, Advocate

For the Respondent : Mr. Ajay Kumar Thakur, Advocate

Mr. Imtiyaz Ahmad, Advocate

Mr. Nilesh Kumar, Advocate

Mr. Babita Kumari, 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: 22-09-2016

The present appeal, under Section 19 of the Family Courts Act, has been filed by the defendant in the Matrimonial Case No. 110/2010, which was allowed on 04.04.2012, by the Principal Judge, Family Court, Jamui. The aforesaid matrimonial case was filed for dissolution of marriage on the ground of desertion and cruelty.

2. Having heard learned counsel for the appellant and learned counsel for the respondent, and with their consent, this appeal is being disposed of at this stage itself.

3. It appears that appellant was married to the



respondent on 14.03.2007, in accordance with Hindu customs and rites. The appellant belongs to Bariyarpur, District – Munger, whereas the defendant belongs to District – Jamui, but works at Collectorate Lakhisarai, District – Lakhisarai. He is a class-III employee in the Collectorate. It appears that some dispute started from very beginning. However, in spite of disputes on 27.08.2008, the appellant, out of matrimonial alliance, gave birth to a baby boy on 27.08.2008. Since the time of birth of this baby boy, the appellant had been living with her father at Bariyarpur, and the respondent refused to take her back to her matrimonial house. Pursuant where to, she filed complaint against the respondent in the Court of Chief Judicial Magistrate, Munger, bearing Complaint Case No. 690(C) of 2010, and also Maintenance Case No. 61M/2010, before the Principal Judge, Family Court, Munger. It appears in retaliation, the respondent also filed Bariyarpur P.S. Case No. 48/2010, alleging that on 04.04.2010, the family members of appellant took away the appellant and jewellery from the house of the respondent. The appellant, then, came to know that the respondent, her husband, had filed a matrimonial case being the present Matrimonial Case No. 110/2010, before the Principal



Judge, Family Court, Jamui for divorce. She admits that she received summons in respect thereof, but on receipt of summons, she filed a transfer application before this Court being MJC No. 2390/2011, in which, on 04.08.2011, further proceedings in the courts below were ordered to be stayed, while notices were issued to the respondent. In view of the stay order granted by this Court, the appellant was under the impression that the proceedings in the matrimonial case at Jamui would have come to stand stayed. Later on, in the matrimonial case filed by the appellant before the Principal Judge, Family Court, Munger being Maintenance Case No. 61M/2010, the respondent appeared on 20.07.2012, and disclosed that the Matrimonial Case No. 110/2010 filed by the Principal Judge, Family Court, Jamui had been allowed *ex parte* on 04.04.2012, and having waited for about three months, an appeal had not been filed. Upon knowing this, the appellant took certified copy of the court proceedings before the Principal Judge, Family Court, Jamui. It is admitted that in those proceedings not only summons were issued to the appellant, but newspaper publications were made. On coming to know and having obtained the certified copy, this present appeal has been filed.



4. Having considered the matter, we must note first that the appellant does not dispute that she was aware of the matrimonial case filed at Jamui by the respondent seeking divorce from very beginning, but she chose not to appear there at all. Instead, she moved this Court for transfer of the case and obtained a stay order. Even though, she obtained the stay order, she made no effort to communicate this order to the Family Court at Jamui, assuming that the orders must have been communicated. This clearly shows that neither the Jamui Court nor the respondent were made aware of proceedings for transfer of the case pending in the Court. The matrimonial case at Jamui, thus, proceeded *ex parte*, and court taking precautions to even publish the notice in the newspaper.

5. Thus, to say that the appellant was not aware of the proceedings or the court proceeded in spite of stay order granted by the High Court is not correct. A stay order operates only if it is communicated either directly or constructively. Thus, we do not find any fault in the Family Court, Jamui, in proceeding with, *ex parte*. On this count, we are unable to interfere.

6. There is yet another more important ground on which no interference is called for, because this appeal

itself becomes not maintainable. As admitted by the appellant herself that, the respondent having obtained the decree for divorce, and having waited sufficiently long, married a second time, the first marriage having been dissolved. Now, the question is, what is the consequence thereof?

7. Sri Ajay Kumar Thakur, learned counsel appearing for the respondent, submitted that undoubtedly the Family Judge, Jamui granted decree of divorce on 04.04.2012 but this appeal was filed on 13.08.2012. The period of limitation, as provided, for filing the appeal in terms of Section 19 of the Family Courts Act, is 30 days. Even if we take the period to appeal, as provided by the Hindu Marriage Act to be 90 days, then, the respondent having waited for 90 days, and no appeal having been filed, even no application for certified copy having been made, he solemnized second marriage. It is, thereafter that, this appeal was filed. Therefore, this appeal now becomes not maintainable.

8. Contesting the legal position, learned counsel for the appellant relies on the judgment of the Apex Court in the case of **Tejinder Kaur Vs. Gurmit Singh** since reported in **AIR 1988 SC 839**. In our view, all that the said judgment holds that a divorce decree having been



passed, the husband ought to have waited for the period of limitation to expire before solemnizing second marriage. The decisions, referred to therein, are all on the same lines. To the contrary, judgment of the Apex Court in the case of **Lila Gupta Vs. Laxmi Narain** since reported in **AIR 1978 SC 1351**; wherein the Supreme Court has in clear terms held that once the period of limitation for filing an appeal is over and a person remarries, the appeal would then be not maintainable. The reason being that, if the appeal is entertained and is to be allowed and the decree of divorce is to be set aside, then the second marriage, solemnized during the period first marriage was dissolved, would become a void marriage. The children from that marriage would become illegitimate. Surely that cannot be permitted. Therefore, it was said that in such a situation the appeal itself becomes not maintainable.

9. Learned counsel for the appellant then relies on a recent judgment of the Supreme Court in the case of **Smt. Kajal Chowdhury Vs. Dilip Chowdhury** since reported in **AIR 2004 Cal 113**. We have gone through the said judgment which is clearly distinguishable. The judgment notices the fact that, after the husband got notice of the belated appeal being filed with condonation

application, may marry. The plea was taken that the appeal having been filed belatedly, the husband had a right. The court negatived it, clearly holding that, he had notice of the proceeding already having been filed, and as such, the second marriage, after the notice of the proceedings, would not make the appeal not maintainable.

10. In the present case, the facts are totally different. Admittedly, the appeal as filed is grossly barred by limitation. The appeal was only filed after the appellant got knowledge of the decree of divorce as well as the second marriage, which marriage was performed after period of limitation for filing appeal had expired. Thus, in our view, this makes the appeal, as filed by the appellant against the *ex parte* decree of divorce, not maintainable.

11. However, considering the fact that the respondent does not disown the child and the only ground taken note of for the purpose of divorce is cruelty as a consequence of desertion, we think that it would be appropriate to direct in terms of Section 25 of the Hindu Marriage Act, 1956, permanent alimony and maintenance be provided.

12. We, therefore, direct the respondent husband

namely, Jyotish Kumar Rajak, to ensure a deposit in nationalized bank at Bariyarpur, a sum of Rs. 5,00,000/- (Rupees Five Lacs) in the name of his minor son from the matrimonial relationship with the appellant which should be placed in fixed deposit. Out of that Rs. 5,00,000/- (Rupees Five Lacs), Rs. 3,00,000/- (Rupees Three Lacs) would be deposited in a cumulative fixed deposit account and allowed to grow year after year till the minor child attains the age of 18 years, when the entire amount would then be paid to him absolutely. The balance Rs. 2,00,000/- (Rupees two Lacs) would be deposited in fixed deposit separately on long term basis, the interest whereof would be utilized for the maintenance of the minor son and this fixed deposit would also continue up to the age of 18 years of the minor. It would be absolutely in his name to facilitate the aforesaid transactions. An account in the name of the minor be also opened in the bank, but in all these three accounts the minor's guardian would be the appellant namely, Amrita Kumari @ Amrita Devi, the mother of the infant. Apart from this, the respondent would pay as a one time settlement Rs. 5,00,000/- (Rupees Five Lacs), to the appellant. The same would be paid by crossed draft drawn on a nationalized bank



payable in favour of the appellant who shall separately open a bank account. It would be upon her to decide as to how to utilize this money. Upon payment of these two amounts totaling to Rs. 10,00,000/- (Rupees ten Lacs), the respondent-husband would have no further liability to pay any monthly maintenance pursuant to orders of any court or authority. However, amount of Rs. 10,00,000/- (Rupees ten Lacs) would be accordingly paid/deposited, within a period of four months from today.

13. It is also made clear that all the criminal cases, as between the parties and their relatives, arising out of matrimonial alliance would stand terminated/quashed, so that parties are free from any further relationship or harassment.

14. This appeal is, accordingly, disposed of.

(Navaniti Prasad Singh, J.)

Rajeev/A.F.R.

(Nilu Agrawal, J.)

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