

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Miscellaneous Appeal No.32 of 2010**

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Rajeshwar Jha S/O Sri Lakshmeshwar Jha R/O Binodanand Jha  
Road, Deoghar, Near Hindi Vidyapith Main Gate, Deoghar, P.O. B.  
Deoghar, P.S. Deoghar, Town & Distt. Deoghar and presently  
residing at Chuhabagan, P.O. Dumka, P.S. Dumka, District  
Dumka.

.... .... Appellant

Versus

Mrs. Priyanka Jha D/O Sri Surendra Jha R/O Veer Kunwar Singh  
Nagar, Dakhini Jakkanpur, P.S. Gardanibagh, in the town &  
District of Patna

.... .... Respondent

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**Appearance :**

For the Appellant : Mr. Amar Nath Deo, Advocate  
Mr. Vijay Bharti, Advocate  
For the Respondent : None.

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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: 18-10-2016**

The present appeal has been preferred  
against the judgment and decree dated 13.10.2009,  
passed by the Principal Judge, Family Court, Patna, in  
Matrimonial Case No. 515/2006, whereby the appellant's  
Matrimonial Case, seeking dissolution of  
marriage/divorce, has been dismissed.

**2.** Although before the trial court the respondent  
had not appeared. The sole respondent had appeared  
and contested at this appellate stage, she had entered



appearance and appeared before the court for sometime, but, apparently after orders were passed, asking the appellant to visit and stay with her, whereafter the appellant informed the court that the respondent was unwilling to stay nor allowed petitioner to stay with her, nor her family members were so inclined, she has remained unrepresented.

**3.** We have heard this matter on three dates and perused the records. Respondent did not appear before the court and remained unrepresented. We are thus proceeding ex parte.

**4.** The appellant was and is a Grade-IV employee in the Civil Court, earlier at Dumka now at Deoghar, both in the State of Jharkhand. Appellant's marriage with Priyanka Jha was solemnized on 23.06.2004 at Patna, where she and her parents reside. After marriage, as per customs, he stayed at Patna for three days. Allegedly, there was no cohabitation permitted by the respondent. On 26.06.2004, the couple traveled to Deoghar but wife's brother accompanied them and was always between the two. On 30.04.2004, there had to be a reception at Deoghar pursuant to the marriage aforesaid, but in the morning itself, the respondent fell seriously ill, and her brother insisted taking her back to



Patna immediately for treatment. The reception had to be cancelled. In the meanwhile, the appellant noticed very strange and unnatural behaviour of his wife having returned to her parents at Patna. In spite of various efforts made, she refused to come to Deoghar, nor her parents allowed her to come to Deoghar to live with the appellant at the matrimonial house. Ultimately, the petitioner was forced to file a suit under Section 9 of the Hindu Marriage Act, for restitution of conjugal rights being Matrimonial Case No. 109/2004, before the Family Court at Deoghar. The proceedings were contested. In those proceedings, appellant's wife and appellant's father-in-law appeared, and there, it was disclosed that in fact the respondent, Priyanka Jha had been suffering from some serious mental ailment from February 2004 and had been in regular treatment up to December 2004 at the Central Institute of Psychiatry, Kanke, Ranchi (Jharkhand) with regular visits and continuous medication received from the said Institute. This surprised the appellant and explained the strange and unnatural behaviour at that time and soon after the marriage. The appellant then wanted to convert this Section 9 application into an application for dissolution of marriage under Section 12 of the Hindu Marriage Act,

which the court did not allow, and seeing the situation, the respondent and her father agreed before the court that the respondent would go and live with appellant at Deoghar. In view of this undertaking, the Section 9 application was disposed of. But, the respondent never came to the matrimonial house. Accordingly, at Dumka, Matrimonial Application No.134/2005 was filed once again by the appellant, this time for dissolution of marriage in terms of Section 12, and alternatively for dissolution of marriage in terms of Section 13, which was transferred to Patna at the instance of respondent by orders of Hon'ble Apex Court and numbered as Matrimonial Case No. 515/2006. Basically the grounds urged were that Priyanka Jha was suffering from serious mental disorder from before the marriage. It was withdrawal of the medicines at the time of marriage, which had caused her to become seriously sick and to return of her matrimonial house cancelling the reception. This fact came to be known only in Section 9 proceedings. Thus, the marriage was sought to be declared a void marriage. The other was that being mentally sick, the appellant could not be expected to live with her, and, alternatively, her not agreeing to live with him, amounting to cruelty. In support of the pleas,



the appellant examined five witnesses, he exhibited the proceedings of earlier Section 9 matrimonial case documents filed therein, including copies of medical prescriptions issued from the Central Institute of Psychiatry, Kanke, Ranchi (Jharkhand).

**5.** On behalf of the respondent, four witnesses including the wife were examined. There was a court witness, Dr. Pramod Kumar Singh, Head of the Department of Psychiatrist, Patna Medical College and Hospital (in short "PMCH"), Patna, who was brought in to explain the prescription.

**6.** The first thing we would like to notice is that the respondent admitted that Priyanka Jha was medically sick from long before the marriage which fact was not disclosed to the appellant. Her consent of marriage was not taken. She was under treatment of doctors at Central Institute of Psychiatry, Kanke, Ranchi (Jharkhand), and had been under regular medication. The court witness, Dr. Pramod Kumar Singh, on seeking the copies of prescriptions, stated that medicines prescribed clearly indicated serious mental illness, but exactly what was the illness that was being treated, the prescription did not disclose. Let it be noted that these prescriptions was brought on record by the respondent

herself. The respondent unfortunately did not bring on record the full report of medical treatment to show that whether mental illness was curable or not. Even though they were questioned, nothing particular was disclosed by them.

**7.** The other thing we would like to notice is that the marriage was not consummated. The appellant has stated that always one or the other family member of respondent was present, even at the night, during the short period that the couple were together in between 23.06.2004 and 30.06.2004. Thereafter they have not met. The only exception being when this court, at the appellate stage, directed the appellant to go and live with his wife at her place at Patna to somehow make the marriage workable, but here again, though the appellant went, he was not even allowed to sit by the side of his wife, muchless live with her. This fact having been brought to the notice of the court, the respondent stopped appearing in the court herein at this appellate stage.

**8.** The trial court has taken a hyper technical view of the matter and dismissed the application. It has stated that there has been non proof of the fact that the respondent was suffering from incurable mental



disorder or mental disorder of such nature which excuses the appellant from staying with her. The respondent had accepted the mental disorder. It was for them to show what was the nature of disorder, how serious or how minor or how transient it was. It was a fact that was exclusively within the knowledge of respondent, and therefore, the onus of proof in terms of Section 106 of the Evidence Act lay upon the respondent and not upon the appellant.

**9.** Having concealed those facts, adverse inference ought to have been drawn against the respondent. If they had disclosed the true state of affairs it would have destroyed their defence that is why they did not disclose the extent of the mental illness. This is so far as Section 12 plea that the marriage is voidable, is concerned. In our view, the facts, as noticed above, justify the plea under Section 12(1)(b) of the Act. No person can be forced to live with a mentally sick person in marriage, without the knowledge of mental sickness especially known before marriage. It is known to the other side in matrimonial alliance, which is life long relationship, which cannot be taken lightly. A mental illness is an important factor in deciding whether to marry or not. Had these facts been disclosed, the appellant could have

refused the matrimonial alliance.

**10.** It is, therefore, said that it was deliberately concealed. The respondent does not state that, at any point of time, this fact was disclosed to the appellant. Thus, as noted above, it was a fit case for grant of relief in terms of Section 12(1)(b) of the Act.

**11.** Further, the parties were married in the year 2004, and from 23.06.2004, the respondent never expressed her willingness to go and stay with the appellant. Rather, even at the appellate stage, when efforts were made for conciliation, it failed. The respondent never pleaded that she had any good reason to stay away from the appellant or the appellant had thrown her out or the appellant had been disrespectful or cruel to her. In spite of all these, she chose to stay away from matrimony. This is a clear case of cruelty. If one partner to a matrimonial alliance without any reasonable cause stays away from the company of the other partner or deprives the other partner of her or his company for an unduly long time, it has to be held that this would amount to mental cruelty or a mental torture.

**12.** The parties having married on 23.06.2004, the marriage has not yet been consummated. They have been living separately for 12 years. Even before the trial



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court they were living separately. Cruelty, desertion both stand established. Thus, we have no option, but to allow this appeal, setting aside the judgment and decree dated 13.10.2009, passed by the Principal Judge, Family Court, Patna in Matrimonial Case No. 515/2006, and hold that the appellant is entitled to dissolution of marriage, on all the grounds, as noticed above. Let a decree be, accordingly, prepared.

**13.** Let the Lower Court Records be returned immediately.

**(Navaniti Prasad Singh, J.)**

**(Nilu Agrawal, J.)**

*Rajeev/A.F.R.*

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