

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.636 of 2014

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Bal Kukund Kumar, Das Son of Bhagirath Das, At.-Madpa, Police Station
- Balbadda, District - Godda, at present Mohalla - Kazichak, Police
Station - Mozahidpur, District - Bhagalpur

.... Appellant

Versus

Neena Kumari, Daughter of Jainarayan Gupta, At.- English Chichroun,
Police Station - Akbar Nagar, District - Bhagalpur

.... Respondent

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Appearance :

For the Appellant/s : Mr. Diwakar Yadav, Advocate

For the Respondent/s : 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: 21-10-2016

Interlocutory Application No. 352 of 2015 has
been filed for condoning the delay in filing the appeal.

2. Delay is condoned. Accordingly, I.A. No. 352 of
2015 stands allowed.

3. The present appeal under Section 19(1) of the
Family Courts Act, is against part of the judgment and
decree passed by Principal Judge, Family Court, Bhagalpur
in Matrimonial Case No. 250/2011, dated 3rd of July, 2014,
whereby while granting decree of divorce, the learned
Principal Judge, Family Court, Bhagalpur, awarded
permanent alimony under Section 25 of the Hindu Marriage
Act, to be paid by the appellant to his estranged wife a sum
of Rs. 2,00,000 (Rupees Two Lacs). The appeal is against
this part of the judgment and decree.

4. In spite of due service of notice, the respondent, estranged wife, has chosen not to appear.

5. The appellant was the petitioner before the lower court seeking divorce on the ground of desertion. The trial court held that in terms of Section 13 of the Hindu Marriage Act, the ground of desertion can only be taken if desertion was more than two years. The trial court noticing the evidence and the application which was filed on behalf of the respondent on 19.11.2013, wherein she had agreed for divorce, subject to payment of permanent alimony of Rs. 2,00,000 (Rupees Two Lacs), granted decree of divorce.

6. There is a rejoinder by the petitioner-appellant in which it was stated that petitioner had passed L.L.B. and in the year 2013 itself he enrolled with the State Bar Council and was practicing as a new lawyer in the Civil Court at Bhagalpur. He was earning about Rs. 1000/- only, per month. He could barely manage to support himself. He had no landed property, whereas, the respondent was an Auxiliary Nurse and Midwife (A.N.M.) drawing a remuneration of over Rs. 15,000/- a month. She has now become permanent and drawing salary of over Rs. 40,000/- a month.

7. In that view of the matter, learned counsel for the appellant submits that instead of the respondent asking for permanent alimony, it was a fit case in which petitioner



ought to have been granted alimony from his wife. There were no materials to contradict what the petitioner said. The respondent did not deny these facts.

8. Having considered the matter, in our opinion, the appeal has to be allowed and the judgment and decree, to the extent in relation to grant of permanent alimony of Rs. 2,00,000 (Rupees Two Lacs) to the respondent under Section 25 of the Hindu Marriage Act, cannot be sustained.

9. Firstly, there is no evidence that the wife was unable to sustain herself nor is there any evidence that the wife was in need of financial support. On the contrary, the material on record clearly show that the petitioner-appellant had an income of about Rs. 1000/- a month only, having just entered in practice as a lawyer in the City Civil Court, Bhagalpur, whereas, the respondent was an A.N.M., and at that time, she was receiving a remuneration of about Rs. 15,000/- a month. It is submitted that now she has become permanent and she is drawing a remuneration of over 40,000/- a month. It was, in fact, this disparity which brought about the differences between the two, leading to divorce. In view of this fact, the order cannot be sustained in so far as grant of permanent alimony is concerned.

10. Thus, the judgment and decree, to the extent, it grants permanent alimony to the respondent to be paid



by the petitioner-appellant, is set aside, while the judgment and decree for divorce is maintained.

11. This appeal is, accordingly, allowed.

12. Let the Lower Court Records be returned immediately.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/N.A.F.R.

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