

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.785 of 2012

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Dhirendra Kumar Dhiraj S/O Sashi Bhushan Singh Resident Of Village
Bajitpur Khurd, Police Station Jandaha, District Vaishali.

.... Appellant/s

Versus

1. Kushboo Kumari W/O Dhirendra Kumar Dhiraj D/O Vishwanath Singh
Resident Of Village Jafarpatti Bakhri, P.O. Rampur Bakhri, P.S.
Rajapakar, District Vaishali.
2. Vishwanath Singh S/O Ramuchit Singh Resident Of Village Jafarpatti
Bakhri, P.O. Rampur Bakhri, P.S. Rajapakar, District Vaishali.
3. Sita Devi W/O Vishwanath Singh Resident Of Village Jafarpatti Bakhri,
P.O. Rampur Bakhri, P.S. Rajapakar, District Vaishali.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dharmesh Kumar
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR
DATTA**

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

2 19-01-2016

I.A.No.5545 of 2013

The Interlocutory Application has been filed for
condoning the delay of one month seventeen days in filing the
Miscellaneous Appeal.

It is submitted by learned counsel for the appellant that
due to clerical error in the case number in the certified copy of the
judgment, the same had been rectified and thereafter the present
appeal has been filed.

In the aforesaid view of the matter, the delay in filing the

appeal is condoned.

I.A.No.5545 of 2013 is accordingly, disposed of.

Heard learned counsel for the appellant and learned counsel for the respondents no.1 and 3.

The appeal has been filed against the judgment and order dated 02.08.2012 passed by the Principal Judge, Family Court, Vaishali at Hajipur in Divorce Case No.45 of 2010 by which the said case was dismissed on contest with cost.

The facts of the case need not be narrated in detail except to state that it is the case of the appellant that the marriage was solemnized between the appellant and the respondent no.1 on 03.12.2007 and subsequently the wife came to her matrimonial home but returned back to her parental home after six months. Thereafter she again came back to her matrimonial home after a gap of seven months and returned back to her parental home after one and half month. It is also alleged that she suffers from mental illness and during attack of same she behaves in a very cruel manner in a fit a rage. Upon rift in the relationship between the parties the appellant filed the divorce case for dissolution of marriage. The respondent appeared and filed her written statement, denying the charge of illness and desertion. It was alleged that the ground of desertion is an after thought of the

petitioner husband and in fact he himself refused to keep the wife or allow her to live in his society, and she had been physically assaulted by the appellant and his family members, and forcibly ousted from the matrimonial home due to non-fulfilment of demand for dowry.

Both the issues, regarding desertion and mental illness, have been decided against the petitioner-appellant.

So far as the first issue is concerned, learned counsel for the appellant admits that the period of desertion was only 14 months and, thus, the condition required for the dissolution of marriage on the said ground was not fulfilled.

Both the issues are decided against the appellant.

So far as the issue regarding unsoundness of mind is concerned, there was only oral evidence on the said issue on behalf of the appellant but there was no documentary evidence in support of the same nor a competent doctor/psychiatrist was either produced or sought to be summoned in the court below. Thus, the said issue was also decided against the appellant.

In the aforesaid view of the matter, there is no material on the record for learned counsel for the appellant to assail the judgment and order on the aforesaid ground and no such finding could have been recorded in favour of the appellant on the ground

of mental unsoundness unless there was cogent material to back the said claim.

For the aforesaid reasons, we find no merit in the appeal and it is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

B.Kr./-Sudip

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