

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.273 of 2015

Kunal Kumar, Son of Late Krishnanandan Singh, resident of Village- Chhotki Paipura, P.S.- Khagaul, District- Patna.

.... Appellant

Versus

Kamini Devi, Wife of Sri Kunal Kumar and Daughter of Late Bahadur Singh, resident of Village- Barki Kopa, P.S.- Naubatpur, District- Patna.

.... Respondent

With

Miscellaneous Appeal No. 915 of 2016

Kunal Kumar, Son of Late Krishnanandan Singh, resident of Village- Chhotki Paipura, P.S.- Khagaul, District- Patna.

.... Appellant

Versus

Kamini Devi, Wife of Sri Kunal Kumar and Daughter of Late Bahadur Singh, resident of Village- Barki Kopa, P.S.- Naubatpur, District- Patna.

.... Respondent

Appearance :

(In MA No. 273 of 2015)

For the Appellant/s : Mr. Sunil Kumar alias Sharma, Advocate

For the Respondent/s : None

(In MA No. 915 of 2016)

For the Appellant/s : Mr. Sunil Kumar alias Sharma, Advocate

For the Respondent/s : None

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 22-08-2016

These two appeals are co-related. Misc. Appeal

No. 915 of 2016 is directed against the order dated 08.04.2015, passed

by the learned Principal Judge, Family Court, Patna in Matrimonial

Case No. 5896 of 2014 (Kunal Kumar Vs. Kamini Devi) whereby the application of the petitioner-appellant for declaring the marriage as between him and Kamini Devi to be void, has been rejected on the ground of being barred by limitation, as provided under Section 12(2) of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act).

Misc. Appeal No. 273 of 2015 is directed against the order dated 05.06.2015, passed in the same very matrimonial case by the same court refusing to review the earlier order dated 08.04.2015. We may note that when Misc. Appeal No. 273 of 2015 was listed before us, we pointed out to the learned counsel that the miscellaneous appeal from the order refusing to review, by itself, may not be maintainable, in absence of challenge to the main order, in pursuance to which the second appeal being Misc. Appeal No. 915 of 2016 has been filed. The earlier miscellaneous appeal is late by four days, and in the facts noted above, the later appeal is late by more than a year. In both the appeals separate condonation applications have been filed.

From the facts noted above, there are sufficient grounds for condoning the delay in preferring the two appeals. Delay is condoned. I.A. Nos. 6870 of 2015 and 6282 of 2016 are, accordingly, allowed.

We have heard learned counsel for the



petitioner-appellant at length. From the pleadings and the substantive order passed in matrimonial case it appears that when the petitioner-appellant was of about 12 to 14 years of age and studying in school in Patna, he was kidnapped and married to Kamini Devi, who herself was a minor, though slightly elder to the petitioner-appellant. This incident took place in the year 1998. Substantive police cases were lodged thereafter, also several police cases were lodged. Allegedly, the marriage was never consummated, inasmuch as, the petitioner-appellant nor his family, ever accepted the marriage to be valid. On some legal advice, for the first time, in 2014 i.e. almost 16 years after the incidence, this matrimonial case was filed for declaring the marriage to be void on the ground of being unconsented marriage between the two minors. We may note that consent or no consent after the amendment of Section 5(iii) and Section 12(1)(c) of the Act, child marriage is not a valid marriage, but, Section 12(2)(b)(ii) is apparently a bar in bringing action for annulment of marriage, if not done within the period specified therein.

Learned counsel for the petitioner-appellant submits that the brothers of Kamini Devi are dreaded criminals. There are several cases against them and it is because of that that the petitioner-appellant could not gather courage to move against them in this matter.

Learned Family Court noticing the bar of limitation as aforesaid, dismissed the matrimonial case and there being no ground for reviewing the same, the review petition was dismissed, hence, the two appeals.

In our view, the order of the learned Family Court cannot be faulted. The petitioner-appellant may be correct that the marriage was solemnized amongst the two minors after 1978. The marriage is not legal but to get a declaration to that effect in terms of Section 12(1)(c) of the Act, there is a limitation provided. The limitation having expired, and the petitioner-appellant taking steps much thereafter, the courts are prevented from proceeding to examine the matter by operation of law. That being the position, we cannot hold that the order passed by the Family Court is bad or requires interference.

However, this does not mean that the petitioner-appellant, who has other remedies to avoid the marriage, cannot invoke them. We would, accordingly, hold that notwithstanding dismissal of these appeals, the petitioner-appellant may institute or pursue such other remedies, which by law he is entitled, and dismissal of these appeals would not come in way of the petitioner-appellant, on grounds other than the present. If any such action is brought by the petitioner-appellant before the court, the court would decide the same

without being prejudiced in any manner by dismissal of these two appeals.

For the reasons aforesaid, these two appeals require no interference. These appeals are, accordingly, dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh

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