

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.397 of 2015

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Anchala Devi @ Anchala Kumari daughter of Sri Nandu Sao resident of village Harnichak, Mahuli Tola, P.S. Phulwarisharif, District Patna.

.... Appellant

Versus

Mithilesh Kumar @ Ajay Kumar son of Ramanand Prasad resident of village Navratanpur P.S. Khagaul, P.O. Khagaul, District Patna.

.... Respondent

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Appearance :

For the Appellant : Mr. Gouranga Chatterjee, Advocate,
Mr. Nilanjan Chatterjee, Advocate,
For the Respondent : Mr. mayanand Jha, Advocate
Mr. Giridhar Gopal Tiwary, Advocate
Mr. Dharmendra Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 27-02-2017

Heard learned counsel for the appellant and
learned counsel for the respondent.

The only issue that remains for consideration in
the present case is that the grant of one time lump-sum
alimony to be paid by the respondent to the appellant. We had
agreed to consider only this question and directed the parties to
bring on record evidence to justify their stand.

Though, on behalf of the respondent-husband, an
affidavit has been filed making certain submissions in this
regard, on behalf of the appellant-wife, no steps have been



taken. Even in the lower court no meaningful evidence was led by the wife in this regard, rather she accepted that her husband was unemployed but had some agricultural land belonging to the joint family. Upon consideration of this fact alone, the trial court granted one lump-sum payment of Rs. 4,00,000/- (Rupees Four Lacs) to be paid by the husband-respondent to the wife-appellant, which has been paid and duly withdrawn by the wife though after filing of the appeal.

On behalf of husband-respondent, it is submitted that she has accepted the alimony and withdrawn the amount. It would amount to waiver of a right to challenge, by way of acquiescence. We are unable to accept this contention inasmuch as it is after filing of the appeal that the amount lying to the credit of the person was withdrawn by her. It is obviously without prejudice to prosecuting the appeal.

On behalf of the appellant, the wife, it is submitted that Rs. 4,00,000/- (Rupees Four Lacs) is grossly inadequate. Whether the amount is adequate or not is purely a question of fact which has to be established by evidence on record. The evidence, as we have noticed earlier, is only to the extent that the respondent-husband is unemployed. He has some agricultural land in jointness with his father and other brothers. What is the extent of land, what is the income



therefrom or his share, there is nothing on record. Even though, the appellant-wife had sought alimony, she failed to bring materials on record both to justify the claim and to quantify the claim.

In our view, in absence of evidence, it is not open to the Court to hazard in guess because what may be thought just by the court may not be proper for either of the parties. There is no evidence for that. Further, even at this stage, we had granted indulgence to bring on record evidence to show that the claim was inadequately dealt with. Nothing has been brought on record. The parties were married in the year 1999. They have no children as the marriage was hardly consummated.

In view of the aforesaid, we see no reason to continue with this appeal. This appeal is, accordingly, dismissed.

(Navaniti Prasad Singh, J.)

(Vikash Jain, J.)

Rajeev/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	
Transmission Date	

