

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.292 of 2010

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Arjun Roy, son of Late Ram Baran Roy, resident of village Rani, Police Station Bachhwara and District- Begusarai.

.... Appellant/s

Versus

Dr. Niranjana Kumari, daughter of Sri Raj Narayan Choudhary, resident of village Pachpaika, Police Station Ujjiyarpur and District Samastipur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. J.S. Arora, Sr. Advocate
Mr. Partha Sarthy, Advocate
Mr. Avinash Chandra, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL ORDER

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

16 22-09-2017 Learned counsel for the appellant is present. None appears on behalf of the respondent. It appears from the record that on 20.09.2017 also none had appeared on behalf of the respondent. Thus, this Court is left with no option than to proceed to hear this matter on its merit even in the absence of the respondent.

We have heard counsel for the appellant.

This appeal is directed against part of the judgment and decree dated 07.02.2008 passed by the Principal Judge, Family Court, Samastipur in Divorce Case No. 2 of 1996.

The appellant filed a petition for stay of part of judgment by which the husband i.e. appellant has been directed to



pay maintenance of Rs. 7000/- after divorce was granted under Section 13B of the Hindu Marriage Act, 1955 on mutual consent of the parties.

Respondent-wife filed a petition for dissolution of marriage for passing a decree of divorce on the grounds raised in the application. However, during the pendency of the case, both sides agreed that the divorce should be granted under Section 13B of the Hindu Marriage Act. Accordingly a joint petition for grant of divorce under Section 13B of the Act was filed by the parties on 25.07.2007.

The Court below eventually granted such divorce on payment of a lump sum amount of Rs. 3,11,000/- as agreed between the parties for maintenance and education of daughter.

It would appear from the order dated 27.06.2012 that the said amount has already been paid to the respondent/wife and she has accepted the same. However, the court below, after allowing such application under Section 13B took up a petition which was filed on 16.03.2007 for grant of maintenance by wife i.e. prior to filing a joint petition for dissolution of marriage on mutual consent.

The court below on the basis of materials available on record including the deposition of the petitioner wife as PW1 and



husband Arjun Roy, has further directed that apart from alimony the husband is liable to pay maintenance of Rs. 7000/- per month also.

Mr. Arora, learned counsel appearing on behalf of the appellant has raised a sole question that once marriage is dissolved under Section 13B of the Hindu Marriage Act then the Court was not required to further decide alimony under Section 25 of the Act and direct for payment of additional amount for maintenance as there was no such consent or agreement in the joint petition filed by them.

Upon consideration of the materials on record and the submission made on behalf of the appellant, this Court finds force in the submission made on behalf of the appellant. The joint petition filed on behalf of the parties under Section 13B clearly lays down in paragraph 5 that the husband was paying a lump sum amount of Rs. 3,11,000/- against maintenance and education of child. That amount has already been paid and there is no whisper in the joint petition regarding further payment of maintenance save and except the statement made in paragraph 6 wherein it is stated that the opposite party will generously support the daughter at time of her marriage based on the relationship.

The husband and wife both are working and husband



has already undertaken, as would be evident from order dated 27.06.2012, that he shall make available at least Rs. 8 lacs for the purpose of marriage of the daughter at the relevant point of time.

In such a situation, in our opinion, no further amount of maintenance was required to be paid by the husband to the wife under Section 25 of the Hindu Marriage Act

In the joint petition the quantum of alimony which was to be paid to the wife against the maintenance has been mentioned. From the statement made in paragraph 5, it cannot be construed that said amount was for the purpose of maintenance and education of the child only. Otherwise the wife, at the relevant point of time, could have raised such grievance for the amount of maintenance to be paid to her as a condition precedent for divorce on mutual consent. In the absence of that it has to be understood that no further grievance was left to be adjudicated after agreeing for divorce on mutual consent and as such, the court below was not at all justified to open the issue of grant of alimony under Section 25 of the Hindu Marriage Act once divorce was granted under Section 13B of the Act.

Accordingly the impugned judgment and decree to the extent it directs the appellant to pay Rs. 7000/- per month to the wife as maintenance, is set aside. However, the other part of



judgment remains as it is.

The appeal is accordingly allowed to the extent as indicated above.

(Dr. Ravi Ranjan, J)

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(S. Kumar, J)

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