

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.568 of 2013

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Sadhna Devi Wife of Namo Nath Jha, Daughter of Subhash Chandra Pathak
resident of village - Bhav Chhapra, P.S. Minapur, District - Muzaffarpur, Presently
residing at village and P.O. Hardia, P.S. Pupri, District - Sitamarhi

.... Appellant/s

Versus

Namo Nath Jha Son of Late Madhukant Jha Resident of village - Bhav Chhapra,
P.S. Minapur District Muzaffarpur Presently resident at Balughat, Post office Head
Post office, P.S. and District - Muzaffarpur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Nachiketa Jha, Advocate

For the Respondent/s : Mr. N.C. Verma, Advocate

: Mr. Natraj Verma, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date: 06-10-2017

We have heard the parties and perused the records of this
Case.

2. This appeal is directed against the judgment dated 26th
June 2013 passed in Matrimonial Case No. 225 of 2012 by which the
marriage between the opposite party-respondent and the petitioner-
appellant has been dissolved.

3. Shorn of unnecessary details, which are necessary for
adjudication of the matter are enumerated as under:-

The petitioner respondent's husband filed Matrimonial
Case No. 225 of 2012 for dissolution of marriage under Section 13(ia)



and (ib) of the Hindu Marriage Act 1955. In the petition, several allegations regarding cruelty etc. have been made by the opposite party that appellant is a quarrelsome and intemperate lady, she was not looking after the family well, she always mal-treated the respondent and his mother and also abused his brother. It is also stated that she threatened him to lodge a criminal case with the allegation of committing cruelty towards her in connection with demand of dowry. The appellant appeared in the matter but did not file her written statement rather she filed M.J.C. No. 6377 of 2012 for transfer of the matrimonial case No. 225 of 2012 from the Principal Judge, Family Court, Muzaffarpur to Principal Judge, Family Court, Sitamarhi inasmuch as she had already filed a case under Section 9 of the Hindu Marriage Act at for Restitution of Conjugal Right before the Principal Judge, Family Court, Sitamarhi and also her matrimonial home is at Sitamarhi where she is living with her mother and she is feeling difficulty in attending the court on every date. In that case notice was issued upon sole respondent i.e. husband Namonath Jha and the proceeding of the matrimonial case was stayed for about six weeks vide Annexure-1 to the present appeal.

4. From perusal of the order sheet it appears that on 11.03.2013 two petitions were filed by the opposite party. One was with a prayer to allow her to be represented through Advocate of her



choice and the second one was in view of the order passed by this Court vide Annexure-1 that the matter should be stayed till further orders. The Court had passed order only to the extent that the petitions be kept on record and no order was passed on any of the petitions filed by the appellant. Even the next date was also not disclosed in the order dated 11.03.2013. Suddenly on 06.06.2013, there is an order that the Presiding Officer was is on leave and there is attendance filed on behalf of the applicant, next date was given on 12.06.13. From the order dated 12.06.2013 it appears that a petition was filed on behalf of the applicant for immediate disposal of the case. From the record it appears that a copy of this petition was never served upon the appellant and, without informing the other side, order was recorded.

5. It is intriguing as to how on 06.06.2013 an order came to be recorded when there was no inkling in the earlier dated 11.03.2013 regarding the next date of hearing. On 14.06.2013 a witness was examined on behalf of the respondent but could not be cross-examined as the appellant had not appeared. On 15.06.2013 again a witness was examined. On 17.06.2013 again a witness was examined. On 18.06.2013 it is recorded that the opposite party was absent and there was no witness present on her behalf, thus last opportunity was being given. On 20.06.2013 also it stands stated that the opposite party was absent and no witness is present and on 22.06.2013 the evidence on



behalf of the opposite party was closed.

6. Finally, on 26.06.2013 the judgment was delivered.

7. In our view the proceeding as well as the judgment suffers from diverse lacuna.

8. First is that once a petition for transfer of the case was filed by the wife and this Court had stayed the matter for six weeks then when a application was filed on 12.06.2013 for commencing the hearing of the case, the court should have put a query to the applicant as to what had happened in the transfer case but that was never done and the applicant-respondent also did not disclose arguing regarding the stage of the case whether it is pending or disposed of. Secondly, when no date of next hearing was recorded in the order dated 11.03.2013, it is intriguing how on 06.06.2013 the order came to be passed showing the applicant is be present though there is no evidence on record that such date of hearing was communicated either to the appellant or to the respondent.

9. Thirdly, on 12.06.2013, on the petition filed by the applicant, evidence was ordered to be recorded on the next date i.e. 14.06.2013 but the record does not show that copy of the petition was served on the other side. It is not explained any where as how the court understood that the opposite party had knowledge of the date fixed and she had deliberately not appeared. The next question is that



if the opposite party appeared in the suit or case and did not file a written statement and thereafter did not appear on the subsequent date, whether the Court was not bound to record that the court was going to proceed in the matter *ex parte*. The answer has to be in affirmative but the order sheet does not show anywhere that any order had been passed showing that the court was compelled to proceed *ex parte*. Even, no issues involved in this case have been framed.

10. Thus, in our view, from 12.06.2013 onwards it appears that the Court has proceeded in the matter at the behest of the respondent without satisfying itself as to whether the date fixed by it was known to the opposite party or not. That apart, on 17.06.2013, a witness on behalf of the applicant, namely, Shambhu Nath Jha was produced and after recording his deposition he was discharged and the evidence on behalf of the applicant was closed on very next date, though it was well known that opposite party had not appeared and there is nothing on record to demonstrate that the dates were within her knowledge. It has been recorded that she had not been able to produce any witness and last opportunities were being given to her and finally, on 22.06.2013 her evidence was closed and on 26.06.2013 judgment was delivered. So initiation of the proceeding in fact practically started on 14.06.2013 when the first witness was examined and on 26.06.2013 itself judgment was delivered.



11. Now coming to the judgment on merit, it appears that the case of the petitioner has been noted in detail, the deposition of the witnesses have been noted, but there is no finding recorded by the Court as to whether the case of cruelty stands proved rather in one simple sentence it has been stated that from perusal of evidence available on record, in the opinion of the Court, applicant has succeeded in proving his case and the suit was decreed in favour of the applicant and against the opposite party dissolving their marriage.

12. In our view that was also not sufficient at all. Even if the Court proceeded *ex parte*, some finding has to be recorded as to how the evidence led by the applicant has proved the case. Simply saying that the case is proved is not sufficient as a serious matter of dissolution of marriage was involved in the case. At the time of hearing, our attention has been drawn to the fact that a case was filed by the opposite party appellant under Section 498A of the Indian Penal Code and in which the applicant has already been convicted and the appeal is pending.

13. In our view, the fact makes the matter even worse for the appellant as he has to prove cruelty committed by the wife but the case of cruelty upon the wife stands itself stands proved as he stands convicted in the criminal case.

14. In such extraordinary situation which has arisen in this



matter, we are left with no option than to set aside the judgment and remit back the matter to the Principal Judge, Family Court, to allow the appellant to file written statement. After filing written statement, the court shall frame issues and if the applicant- respondent wants to recall the witnesses, allow him to do so and the appellant would be allowed to cross examine the witness. Thereafter she would be allowed to lead her evidence also.

15. Further, since the appellant has filed her case first at Sitamarhi under Section 9 of the Hindu Marriage Act 1955 for restitution of Conjugal rights and the further fact that her father is no more and she is living her his mother and uncle and learned counsel has expressed that she has difficulty in coming to Muzaffarpur and further fact that marriage was admittedly solemnized at village Hardia, P.S. Pupri, in the District of Sitamarhi, in the peculiar facts and circumstances of the case, we ex debito justitiae would direct all records to be transmitted to the Court of Principal Judge, Family Court, Sitamarhi who shall proceed accordingly and expeditiously in this matter as per the observations and directions given above.

16. This is further made clear that if any of the party does not cooperate in the matter, then the Court concerned would be at liberty to proceed in accordance with law. Accordingly, this appeal stands allowed, however, the parties shall bear their own costs.



17. Let the records be immediately transmitted to the concerned.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

