

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21489 of 2014

In
MA 72 of 2013

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Navin Kumar Rai @ Nabin Kumar Roy

.... Petitioner/s

Versus

Smt. Sudha Rai

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajit Kumar

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

8 03-10-2017 Heard learned counsel Mr. Manoj Kumar Sinha for the petitioner and learned counsel Mr. Sanjeev Kumar Jha for the respondent.

2. This writ application has been filed under Article 227 of the Constitution of India by the husband-petitioner against the order dated 11.12.2012 passed by the learned Principal Judge, Family Court, Darbhanga in Matrimonial Case No.10 of 2009 whereby the learned Principal Judge has allowed the application filed under Section 23A of the Hindu Marriage Act by the wife-respondent.

3. It appears that the husband-petitioner has filed a divorce case being Matrimonial Case No.10 of 2009. In this matrimonial case the wife filed the aforesaid application under Section 23A of the Hindu Marriage Act. The husband-petitioner



filed objection to the same and thereafter the court below hearing both the parties has passed the impugned order and considering various provisions has held that the application under Section 23A is maintainable and as such it has been allowed.

4. The learned counsel Mr. Manoj Kumar Sinha appearing on behalf of the petitioner submitted that the application could not have been allowed at the stage when it was filed by the wife. The application should have been considered and relief should have been granted in the judgment. According to the learned counsel, the evidence of plaintiff-petitioner has already been closed and the wife-respondent has also been examined and cross-examined including father but the evidence of the wife has not been closed. However, thrice the reconciliation proceeding has failed and at this stage when the case is at the end, this application has been filed by the wife with a view to linger the proceeding. Therefore, this application itself is not maintainable.

5. On the other hand, the learned counsel Mr. Jha appearing on behalf of the wife-respondent submitted that the court below has only accepted the application filed by the wife-respondent that does not mean that the relief which she is entitled to in the judgment has already been granted by the learned Principal Judge, Family Court. According to the learned counsel,



in view of the provision as contained under Section 23A of the Hindu Marriage Act the application is maintainable by the wife at any stage because for proving this allegation made in the application, no evidence is necessary.

6. Perused the impugned order passed by the court below.

7. It appears that the court below has passed a reasoned order dealing with the arguments advanced by the parties.

8. Section 23A of the Hindu Marriage Act reads as follows:-

“23A Relief for respondent in divorce and other proceedings. - In any proceeding for divorce or judicial separation or restitution of conjugal rights, the respondent may not only oppose the relief sought on the ground of petitioner’s adultery, cruelty or desertion, but also make a counter-claim for any relief under this Act on that ground; and if the petitioner’s adultery, cruelty or desertion is proved, the court may give to the respondent any relief under this Act to which he or she would have been entitled if he or she had presented a petition seeking such relief on that ground.”

9. In view of the above provision, the court has the jurisdiction to give to the respondent any relief under this Act to which he or she would have been entitled if he or she had presented a petition seeking such relief on that ground. Now,



therefore, this application is termed as a 'counter claim' in the divorce proceeding. Therefore, this counter claim is required to be decided along with the application for divorce filed by the husband.

10. In such circumstances, when the court below has only accepted the application i.e. counter claim filed by the wife-respondent, which shall be considered finally along with application for divorce filed by the husband, in my opinion, no case for interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India is made out. Thus, this writ application is dismissed.

11. Since it is divorce proceeding, the Principal Judge, Family Court may proceed to decide the same expeditiously as early as possible.

(Mungeshwar Sahoo, J)

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