

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.403 of 2015

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Rajdeep Mala Kumari @ Anjaly Kumari Daughter of Binod Kumar
Resident of Mohalla - 4 number Pani Tanki, Kalchakra Maidan West,
Bodh Gaya, Police Station Bodh Gaya, District - Gaya.

.... Appellant

Versus

Sunil Kumar son of Bhola Prasad resident of Mohalla New Area,
Adarsh Nagar Police Station Town Thana Aurangabad District
Aurangabad.

.... Respondent

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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: 28-01-2017

I.A. No. 8686 of 2015

There is delay of 34 days in filing the memo of
appeal.

For the reasons mentioned in the application, the
delay in filing the memo of appeal is condoned.

Accordingly, Interlocutory Application No. 8686
of 2015 stands disposed of.

Re: M.A. No. 403 of 2015

In spite of repeated calls, no one is present from
either side.

This is an appeal under Section 19 of the Family
Courts Act against the order of the Principal Judge, Family
Court, Aurangabad, passed in Matrimonial Case No.



146/2013, by which application of respondent-husband for restitution of conjugal rights, in terms of Section 9 of the Hindu Marriage Act, 1955 has been allowed, virtually *ex parte*.

The facts are not in dispute. The appellant is the wife and she was married with the sole respondent-husband according to Hindu customs on 07.08.2009 at Aurangabad. The averments have been noted by the learned trial Judge, *inter alia*, that after marriage, the wife was not ready to live at Aurangabad and wanted to live only at Gaya. The respondent-husband returned her at Gaya, and he had not been allowed to meet his child or stay with his wife. Under the circumstances, when the wife refuses to come and stay with matrimonial house and he was not allowed to meet his wife and have conjugal relationship at Gaya, the respondent-husband filed an application in terms of Section 9 of the Hindu Marriage Act, 1955 for restoration of conjugal rights. Upon the application being filed, steps for issuance of notice to the appellant-wife were taken. It virtually became impossible to serve notice and ultimately substituted service of notice has been resorted. After paper publication, the appellant-wife appeared and filed a petition purporting to be



a petition under Section 19 of the Hindu Marriage Act, 1955 for transfer of case to Gaya. This application was on the basis that the parties were married in the town of Gaya and that the respondent to the application under Section 9 of the Hindu Marriage Act, was residing at Gaya. The said application was heard and dismissed by the Principal Judge, Family Court, Aurangabad. The appellant-wife, who had filed the application for transfer, did not take any steps against that order. Admittedly, the appellant-wife did not move this Court for transfer of the case from Aurangabad to Gaya. Not just that, she abandoned the proceedings at Aurangabad, and stopped appearing in the case, as aforesaid. The Court was, thus, compelled to proceed *ex parte*. The husband-respondent, who was applicant before the Principal Judge, Family Court, Aurangabad, examined himself and his father as the two witnesses. The applicant-husband has brought on record through evidence that they had good conjugal relationship with his wife, out of which, a girl was born, but thereafter, the wife refused to come and live with him in Aurangabad District and wanted the husband to shift to Gaya. The husband had all love and affection for the child and his wife. He continued to pay them maintenance, but



each time he was insulted. The wife had also written to Court that she was not interested in conjugal relationship and wanted divorce. On the basis of this evidence, the Court held that marriage was valid, and there was no justifiable reason for the wife to stay away from her matrimonial house or discontinue conjugal relationship to the husband, and accordingly, the judgment and decree for restitution of conjugal rights was issued.

In the memo of appeal, only ground to challenge the order of the trial court is that, the letter said to be written by the applicant was forged and was not written by the applicant. It is said that the signature on the letter purported to have been written by the appellant is not her signature. We would firstly note that even if we discard this letter from evidence, the fact remains that the couple were married. They have a child and that the appellant staying with her parents at Gaya and refuses to come and stay with her husband at Aurangabad where the husband works. There is no justifiable reason for not staying with the husband or denying conjugal relationship with husband. In that view of the matter, the judgment of the trial court cannot be said to be wrong requiring any interference.



Coming to the letter, which has been annexed as Annexure-1 to the memo of appeal and, comparing the signature therein to the signature on the Vakalatnama of this appeal, as signed by the wife-appellant, *prima facie*, it appears that the signature is of the same person even in this memo of appeal. While denying the said letter, the appellant does not say that there is any justifiable reason to stay away from conjugal relationship.

In that view of the matter, we do not find any reason to interfere in the judgment and order of the trial court. This appeal is, accordingly, dismissed.

(Navaniti Prasad Singh, J.)

(Vikash Jain, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	
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