

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.754 of 2013

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1. Neelu Jain, wife of Pravin Chandra, daughter of Sri Ashok Kumar Jain
 2. Prerna Kumari (Minor) daughter of Pravin Chandra under the guardianship of the mother Neelu Jain
- Both resident of Mohalla Mahajan Toli No. 1, Near Patleshwar Mandir,
Police Station Ara Town, Ara, District Bhojpur.

.... Appellants

Versus

Pravin Chandra, son of Late Parmeshwar Chandra Agrawal, resident of Mohalla Meena Bazar, Police Station Madhupur, District Deoghar.

.... Respondent

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Appearance:

For the Appellants	:	Mr. Manoj Kumar, Advocate Mr. Raj Narayan Mishra, Advocate
For the Respondent	:	Mrs. Nivedita Nirvikar, Advocate Mr. Manoj Mishra, Advocate Mrs. Sanjana, 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: 20-02-2017

We have heard both the parties. The lower Court records have been called for and perused.

2. The appellant no. 1 is the wife. The sole respondent is the husband. This appeal is against the judgment and order dated 29.11.2008 passed by the learned Principal Judge, Family Court, Bhojpur at Ara in Matrimonial Case No. 67 of 2001 (169 of 2005) whereby the learned Principal Judge allowed the application of the husband-respondent and granted decree of divorce on the ground of



desertion. While doing so, he also noted that when the wife was called to the Court and asked to go and live with the husband, she clearly refused.

3. The basic facts are that the appellant no. 1 and the respondent were married on 25.11.1993 according to Hindu rites. The husband resided with his parents which became matrimonial house and that was at Madhupur (District Deoghar) now in the State of Jharkhand. Soon after marriage, on 04.09.1994 the couple was blessed with a daughter. Sometime thereafter the husband's parents being aged became ill, but the wife refused to discharge her obligation to look after her in-laws. She started persuading the husband to separate from his family as she was not interested in looking after or caring for her in-laws. In order to have an amicable relationship the husband agreed to live separately. But then feeling guilty of neglecting his parents he tried to go back, which enraged the wife and ultimately on or about 27.08.1996 i.e., almost two years after the marriage, she left the matrimonial house. The husband learnt that in fact she had already joined B. Ed., course through her father at Phulwarisharif at Patna and she had intended to carry on with her studies neglecting her matrimonial obligations. Lastly on 12.02.1997 the wife finally moved out of her matrimonial house bag and baggage. Thus, when the suit was filed in 2001 the wife had already been away from her matrimonial house for over three years. Upon notice, the wife



appeared in the proceedings and filed written statement submitting that the husband and her father-in-law demanded dowry and used to inflict torture which forced her to ultimately abandon the matrimonial house. She stated that her husband demanded Rs. 50,000/- from her father. She further stated that when the girl was born, neither the husband nor his family members came at the time of birth of the child. Her further case was that at one point she was brutally assaulted and had to be treated by a doctor. She further alleged that the ill-treatment meted out to her as a consequence of non-payment of dowry, her father had a heart attack. She denied that her father-in-law or mother-in-law were ill and needed to be looked after by the daughter-in-law. She further said that she had decided to do B. Ed. course so that she could become a teacher and would be able to satisfy her in-laws with the increased income as a Government teacher. She further alleged that her ill-treatment led her to approach the President of Mahila Samiti to interfere in the matter, whereas her husband's father virtually refused to allow her stay with the family. She further stated that when she asked for maintenance from her husband, the husband wrongly filed this case for divorce. When the matter ultimately could not be patched up, the learned Principal Judge called both the parties and the wife refused to live with the husband. The matter went to trial.

4 We first refer to the justification given by the wife for moving out of the matrimonial house as the factum of moving out is not



denied. In the written statement she has stated that there was demand for dowry for which she has brutally assaulted, but when she came to depose in the Court she clearly stated that her husband had demanded Rs. 50,000/- in order to pay off a debt which had been incurred by the father-in-law. Thus it was not a case of demand of any money which can be termed as "dowry". This cannot be said to be a demand for dowry in any manner. As noticed earlier the wife had alleged that she had been brutally assaulted and had to undergo medical treatment, in respect of which however, no evidence was produced in the Court. It was admitted by her that no case was instituted. It appears that it was merely a verbal assertion unsupported by any materials. She admitted that her father stays in Patna/Arrah where she joined B. Ed. course long before she finally abandoned the matrimonial house, whereas the husband was at that time living at Madhupur in the District of Deoghar (Jharkhand), though the family belonged to Ara, District Bhojpur. In her cross examination in respect of her allegation that when the daughter was born the husband's family did not come, she was confronted with photographs to show that the allegation was false inasmuch as members of the husband's family and husband were present.

5. On behalf of the husband evidence was led to show that the economic condition of the wife was much better. She was residing at Arrah, whereas he is residing at Madhupur in Deoghar, a rural area. On



behalf of the husband it was submitted that it was mainly for this reason that the wife was not ready to go and live with the husband. The trial Court found that though there were various allegations against him, they were unsupported and they were mere verbal assertions. The trial Court also found that the allegations being made by the wife were not correct. She was confronted with photographs (Exhibit 25) to show that the husband and family members were present when the child was born, contrary to the allegation that no-one visited when the daughter was born, as they were expecting a male child and not a female child. Even with regard to Rs. 50,000/- as allegedly demanded, it was admitted by the wife that it was demanded for repayment of debts, but the trial Court found that these were not the allegations in other cases that were filed by the wife. The Court rightly found that there were baseless allegations being added and they were not correct. The Court also noticed on basis of evidences led during the course of trial that the wife had filed a maintenance case in which the Court did not allow maintenance to her though certain sum was directed to be paid for the welfare of the daughter (child). The ground was that she was more affluent than the husband. The trial Court also noticed that a compromise petition was filed on behalf of the parties for granting divorce by mutual consent which was soon thereafter disowned by the wife saying that she had been misled into signing the compromise petition.



6. The trial Court thus found that the parties were married in 1993 and from 1997 they were not living together. Therefore, out of a matrimonial life of about 15 years they had lived together only for initial three years. Finding that there is no reliable evidence to show cruelty from the side of the husband the trial Court found that there was no justifiable reason for the wife to have moved away from the company of the husband. Accordingly, the trial Court granted decree of divorce on grounds of desertion though denied custody of the daughter to the father.

7. The wife has filed this appeal. It would be relevant to note that though the appeal from the order of the learned Principal Judge in normal course, as has already been held by the Division Bench of the Court, has to be a Miscellaneous Appeal, this appeal was originally filed as a First Appeal on 05.01.2009. Ultimately by order dated 29.08.2013 this Court held that the First Appeal as filed by the appellant-wife was not maintainable. On prayer of the appellant, it was by order dated 29.08.2013 allowed to be converted into a Miscellaneous Appeal. Thus the appeal was registered as a Miscellaneous Appeal after subsequent order dated 25.11.2013. In course of hearing before this Court the appellant-wife was present on each date. We have asked the appellant-wife as to why she is prosecuting this appeal inasmuch as, right since 1997, she and the respondent have virtually not talked to each other



i.e., for over 20 years out of 23 years of their marriage. She could not clearly state why she was fighting when she was obviously not ready to go back to her matrimonial house. Before this Court she also mentioned that she could not consider even for a moment of going to the matrimonial house, inasmuch as, the husband has married again and has two children. The husband married on 25.10.2010. To this it was submitted on behalf of the husband that having waited for sufficient time and having not received any notice of appeal and having found that no Miscellaneous Appeal had been filed against the judgment of the learned trial Court, he re-married. As noted above, the First Appeal filed by the appellant was not maintainable until it was finally converted into a Miscellaneous Appeal in the year 2013. In our view, this belated appeal would create a problem inasmuch as the husband having contracted the second marriage after the decree of divorce and after having waited for a considerable period and no Miscellaneous Appeal having been filed, by virtue of the re-marriage itself the appeal becomes not maintainable. However, we would not base our judgment on this issue, as we are in agreement with the trial Court that the wife deserted the husband without reasonable cause. Her assertion of cruelty meted out to her or demand for dowry remains totally unsubstantiated. Demand of Rs. 50,000/- even if we accept was made, it was for liquidation of a debt which cannot be treated to be a dowry demand. Her assertion that the husband or his family members



did not visit her when she gave birth to a girl child was found to be false. In course of hearing she was asked in the Court whether she is ready to live with the husband, which she refused and it appears to be a case of total incompatibility, the wife being more educated and affluent than the husband.

8. In that view of the matter, we do not consider this to be a fit case in which we should interfere. The appeal is accordingly dismissed but in the circumstances without cost.

(Navaniti Prasad Singh, J)

Chandran

(Vikash Jain, J)

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