

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.300 of 2013

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RITU DEVI D/O SRI BASISTH NARAYAN CHAUBEY, W/O SRI
UPENDRA KUMAR PANDEY R/O VILLAGE- BADHA, P.S.- NOUWA,
DISTRICT- KAIMUR

... .. Appellant/s

Versus

Upendra Kumar Pandey S/O Sri Somnath Pandey R/O Village + Post-
Chausa, District- Buxar, At Present C/O Sri Chandeshwar Prasad, Jagdeopath,
P.S.- Hawai Adda, District- Patna

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajendra Kumar Jain
For the Respondent/s : Mr.

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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 : 27-04-2018

This appeal is being disposed of with the consent
of the parties.

2. This appeal is directed against the judgment dated 13th of March, 2013 passed by the Principal Judge, Family Court, Kaimur at Bhabhua in Matrimonial Case No. 189/3 of 2009/2012. The respondent filed the aforesaid Matrimonial Case under Section 13 of the Hindu Marriage Act for dissolution of Marriage between the respondent and the appellant by granting a decree of divorce on the ground that the wife is suffering from a mental disorder of such a kind and to such an extent that the respondent cannot reasonably be expected to live with her.

3. Allegation has been made in the plaint that the opposite party-appellant Ritu Devi never behaved in a normal



manner and is suffering from serious mental deceased. Despite the aforesaid fact, the marriage has been solemnized completely keeping petitioner in dark.

4. Let it be noted that the case was not filed under Section 12 for declaration that marriage was void. Therefore, what has been done prior to marriage may not come in play in the present circumstances. What would be relevant would be the conduct of the contesting party after marriage from where it can be perceived that she was suffering from mental disorder of such decree and order that she would not lead a conjugal life or her spouse would not be in a position to lead a conjugal life.

5. Allegation has also been made that the opposite party-appellant always refused to live with the respondent and also that she had never shown good behaviour as she always ill treated the petitioner and the family members using vulgar language. Whenever the petitioner respondent tried to consummate the marriage, she always used to assault him. She was also not in a position to bear a child. Further allegation was that both of them never lived together as husband and wife.

6. It appears from perusal of the judgment impugned that maintenance case No. 90 of 2009 was also going on which was filed by the appellant for grant of maintenance. This case



was filed before Family Court, Patna but the wife, by filing a petition before the High Court got it transferred to Bhabhua by an order dated 25.07.2011 passed in M.J.C. No. 445/10. The court below has noticed that the High Court has directed the appellant to appear before the Presiding Officer, Family Court, Kaimur at Bhabhua on 27.09.2011 but she neither appeared nor had filed any written statement even though 16 dates were given. Then she was debarred from filing written statement. Subsequently the opposite party-appellant filed an application for supply of copy of plain and leave to file written statement. After hearing the opposite party/appellant, her application was allowed subject to payment of cost of Rs. 5000/-. It was also ordered that in default of payment of cost the case shall proceed ex parte. The opposite party-appellant did not pay the conditional cost and only filed her written statement, which is on record.

7. In such a situation, the case proceeded ex parte and the respondent Upendra Kumar Pandey was examined as A.W.-1. Further, it appears that the order of commission for Women Case No. 93/08, proof of treatment of the wife at P.M.C.H. and prescription slip of Dr. K.K. Sinha, Specialist of mental disease have been brought on record as Exhibit-1, 2 and 3 respectively.



8. From the aforesaid narration of the facts, we have no doubt that the conduct of the appellant was not fair and it appears to us that her action was tactics to delay the disposal of the matrimonial case. Therefore, rightly the cost of Rs. 5000/- was imposed by the court below. We also do not have any objection in accepting that in such a circumstance court could have proceeded ex parte. However, the real question which is involved here would be whether there were sufficient materials on record and whether there is proper appreciation by the court below before declaring that opposite party-appellant was suffering from mental disorder and on that ground, whether dissolution of marriage between the parties is correct?

9. It appears from the impugned judgment that the divorce has been granted only on the ground of the wife suffering from mental disorder. Before proceeding further it would be apt for this court to notice the relevant provision of Section 13 of the Hindu Marriage Act under which the case of the respective parties can be considered.

*Section 13 (1) (iii) is quoted as under:-
13. Divorce-(1) Any marriage solemnized, whether before or after the commencement of the Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-party-*



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(iii) has been incurable of unsound mind, or has suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation- In this clause-

(a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and include schizophrenia;

(b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party and whether or not it requires or is susceptible to medical treatment;

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10. From perusal of the aforesaid provision, it is apparent that the decree of divorce can only been granted in a situation in which one of the spouse has been found to be of incurably unsound mind and was suffering continuously or intermittently from such type of decease to such an extent of his/her spouse cannot reasonably be expected to live with him/her. Now at the first instance, we would have to examine as to whether there were some materials on account of which the



court came to the said conclusion or not? The respondent has been examined as AW-1 in which he has stated that the opposite party-appellant has always behaved abnormally. The respondent informed the parents of the opposite party-appellant regarding such abnormal behaviour. AW-1 exhibited 2 and 3, which are documents of P.M.C.H. and one prescription slip of Dr. K.K. Sinha. However, without appreciating the materials properly and without recording any reason as to how this document and deposition of the sole evidence AW-1, a prudent person can come to such a conclusion that the opposite party was suffering from such type of disease of that decree or order, such judgment have been delivered. In one sentence he has concluded that since there is such provision in Section 13 and the petitioner claims that his wife has mental disorder and there is some prescriptions also, which has not been dealt with by him properly, judgment of dissolution of marriage has been passed.

11. In our view, that was not sufficient. The matter was very serious and it was going to cast permanent scar on relationship of both the parties who were spouses. In such a situation, such a casual order and casual observation could not have been made by the court below. There is no discussion at all as to what were the materials disclosed in exhibit 2 or 3 which



impressed upon him that the opposite party is suffering from such type of mental disease. Even the concerned doctor has not been examined as witness.

12. In the view of discussions as above, we do not have any hesitation in coming to a conclusion that the impugned judgment cannot be allowed to survive and, accordingly, the same is quashed and set aside.

13. Though we have found the conduct of the appellant not to be proper at the time of trial but the matter being a matrimonial dispute, we would allow her another opportunity. Accordingly, the matter is remitted to the court below for taking a fresh decision on its own merit. The court below will accept the written statement of the appellant on payment of cost of Rs. 25,000/- which learned counsel appearing on behalf of the appellant has accepted that she will pay and will not raise any dispute regarding this. On 14th of June, 2018, both sides would appear before the court below and the entire amount of cost must paid by the appellant on that date. No adjournment will be given by the court for depositing the amount of cost. If the cost is not paid by the appellant, aforesaid direction would not survive. Her defence will remain struck off and the case will again proceed from the concerned stage.



14. It is made clear that the amount of cost would go to the other side. Thereafter, the court below shall proceed to frame issue and fresh opportunity would be given to both sides to lead evidence. The exhibits already brought on record would not be required to be brought on record again. If the respondent, who has been examined as AW-1 does not want to lead his evidence once again then in such case his examination in chief would remain intact and the appellant would be at liberty to cross-examine him. However, if he wants to lead evidence afresh after framing of the issues then he would be allowed to do so. If he wants to lead further evidence also by producing more witnesses then that would also be allowed to a reasonable extent.

15. In the result, this appeal is allowed to the extent as indicated above. Let the lower court records be immediately transmitted to the court below.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
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