

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.367 of 2012

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1. Durga Prasad Singh S/O Lalan Singh R/O Village- Sandail, P.O.- Ghatrain, P.S.-
Madanpur, District- Aurangabad

.... Appellant/s

Versus

1. Bina Devi @ Rajeshwari Devi W/O Durga Prasad Singh And D/O Fate Singh
R/O Village- Sandail, P.O.- Ghatrain, P.S.- Madanpur, District- Aurangabad, At
Present Pure Shitalpur Daimon More, P.O.- Ukhara, Baula, P.S.- Andal, District-
Bardawan (West Bengal)

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bhanu Pratap Singh, Advocate
Mr. Bhaskar Shankar, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date: 10-01-2018

Heard learned counsel for the appellant and the
Respondent.

This appeal is directed against the judgment dated 15th of
May, 2012 passed by the learned Principal Judge, Family Court,
Aurangabad in Matrimonial Case No. 29/2011.

The aforesaid matrimonial suit was filed by the appellant
Durga Prasad Singh against his wife Bina Devi @ Rajeshwari Devi
for dissolution of marriage under Section 13 of the Hindu Marriage
Act.

Cheifly two grounds were taken in the plaint for such



purpose. First was cruelty and second was desertion. The petitioner claimed that after his marriage with the opposite party in the year 2000, the wife came to the matrimonial house only for a brief period and, thereafter, she went back to her parents place which is Shitalpur in the District of Burdwan (West Bengal). After two years, second marriage was performed. She again came to the matrimonial house, but again returned back to her father's service place. It is alleged in the plaint that all along she complained of non-availability of electricity, Television set etc. and always expressed that she did not want to live with him in her in-laws house. In the plaint, it is alleged that she has remained at her matrimonial house for about 7-8 months and only under one pretext or other, she always went back to her father's house. When the family members of the petitioner protested such action, she started quarrelling and abusing the family member of the petitioner and all along she used to tease them and treat them with cruelty and always tried to torture the petitioner. Several other allegations have been levelled in the petition.

On the ground of desertion, it is stated that last time, she left her matrimonial home on 20.03.2009 and, thereafter, she did not come back to the petitioner. Since, on 14.03.2011, the petitioner along with his father, went to Shitalpur, Burdawan (West Bengal) and tried to bring her back, but she flatly refused, the present matrimonial case



was filed.

The respondent appeared in the case and filed a written statement refuting allegations levelled against her. She has stated that the petitioner is unemployed and she is employed at Shitalpur (West Bengal) as Anganbari Sewika and she often used to visit the petitioner's house at Aurangabad to take care of her husband but her husband is forcing her to leave the work of Anganbari Sewika. She has stated that though she is ready to live with her husband but it is not possible for her to leave the service as she has to maintain herself and her daughter both.

After filing written statement, she did not appear, thereafter, and following issues were framed by the Court:-

- I. Whether the respondent has, after the solemnization of her marriage with the petitioner, treated the petitioner with cruelty or not?
- II. Whether the respondent has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition?
- III. Whether the petitioner has a valid cause of action to file the case and the case is maintainable or not?
- IV. Whether the court has jurisdiction to this case?
- V. Whether the petitioner is entitled to get the relief as claimed by him?

The appellant-petitioner produced five witnesses including him and none of the witnesses were cross-examined by the wife. It is pertinent to mention here that when the respondent did not appear



after filing her written statement, the matter was fixed for *ex parte* hearing under Order XXVII Rule 2 of the C.P.C.

It is apparent that the issues were framed with respect to the treatment of petitioner by the wife with cruelty and also of withdrawing herself from the society of the husband without any reasonable cause, i.e., desertion.

Now, it is to be seen as to whether by leading evidence, the appellant-petitioner has been able to prove the issue of cruelty or desertion. The Court below has taken note of the fact that so far as period of residence of the wife in matrimonial house, the petitioner has stated in this petition that she lived for a total period of 7-8 months and she did not stay with the petitioner thereafter which shall also be an example of cruelty. Apart from the above, she has treated with him and his family members with the cruelty. However, when a question was asked from him while being examined as P.W.-5, he has stated that she lived in the matrimonial house for only 2-3 months whereas P.W. -2 stated that she lived about one year. On that point, there is no consistency not only in the versions of different witnesses but also in the version of the appellant-petitioner himself who was examined as P.W.-5.

It is to be noted that the wife has stated in her pleading that she is working as Anganbari Sewika at Shitalpur (West Bengal)



but her husband is forcing her to leave the job. The Court below has further noted as under :-

“.....From this para it is apparent that upon the request of the petitioner the respondent came to the petitioner's house and lived with him two weeks after the filing of the case hence it can be presumed that a matrimonial relation was established during these two weeks and the fact also shows the respondent's willingness to live with the petitioner and makes it doubtful that she is quiet reluctant to live with the petitioner and in the matrimonial offence of desertion when during the period of desertion if matrimonial relation is established again, then a matrimonial relief on this ground cannot be granted....”

That apart, even in the examination-in-chief, no specific dates etc. along with the details regarding act of cruelty done on that particular date has been revealed by the petitioner rather a bald and blanket statement has been made that she used to behave with cruelty as used to abuse the family members as has been stated by him as no specific instances were given. There is a difference between the stand taken in the pleading and in the examination-in-chief which is part of evidence. Only reiteration of the version of the plaint in the examination-in-chief would not be beneficial for the plaintiff as that would not amount to any evidence led by him if there is complete lack of details regarding the specific instances regarding cruelty either upon the husband or on his family members. He must corroborate his version taken in the plaint by giving specific instances. A reference is



made in this regard to a decision of Division Bench of this Court rendered in the case of **Seema Vs. Suman Kumar Sinha [2016(2) P.L.J.R. 693]**.

Having regard to the aforesaid, we do not find any merit in this appeal.

In the result, the appeal is dismissed.

(Dr. Ravi Ranjan, J)

(Anjana Mishra, J)

Ajay/Saif/-

AFR/NAFR	NAFR
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