

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.550 of 2014

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Anita Kumari, daughter of Late Chandra Deo Roy, resident of Roy Bhawan,
Rajwati Gali, Adampur, P.O. & P.S.-Adampur, District-Bhagalpur, Bihar.

... .. Appellant/s

Versus

Gyan Prakash @ Dablu, son of Sri Promod Kumar Roy, resident of village
Jamunia (Tulsipur), P.S.-Perbatta, Bhagalpur, District-Bhagalpur, presently
residing at Qr./No. 1182, Sector 6A, Bokaro Steel City, P.S.-Sector 4 Bokaro,
District-Bokaro, Jharkhand.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Diwakar Upadhyaya, Advocate
For the Respondent/s : Mr. Shiwesh Chandra Mishra, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL
ORAL JUDGMENT
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 28-02-2018

Heard parties.

The present appeal has been preferred assailing the
judgment dated 6.08.2014 passed by the Principal Judge, Family
Court, Bhagalpur in Matrimonial Case No. 107 of 2007 which was
filed under Section 13 of the Hindu Marriage Act, 1955 by which
he has dissolved the marriage between the appellant and the
respondent after holding that the petitioner/respondent (husband)
is entitled to get a decree for divorce.

The case of the petitioner-respondent, as per the plaint,
is that the marriage between him and the opposite party-appellant



was solemnized on 20.05.2004 following the Hindu customs, rites and ceremonies. They lived together as husband and the wife till 11.06.2004, i.e., for less than a month. Thereafter, the opposite party-appellant went to the parental house of petitioner-respondent at Bokaro but during that 20 days which the opposite party-appellant spent at the matrimonial house, her behaviour was not cordial and she was not cooperating with the petitioner-respondent and his family members. She used to keep herself aloof from the activities of her-in-laws house. She was very cold towards the petitioner-respondent. She, therefore, went to her parental house and declared that she would never go to her in-laws house and she did not lead conjugal life with the petitioner-respondent. Despite the petitioner's best effort to continue the matrimonial life, the respondent-appellant for the reasons best known to her, refused to continue the same and she never visited her in-laws house at Bokaro again.

The opposite party-appellant filed written statement refuting the allegations. It is stated that after solemnization of marriage, the petitioner-respondent transferred his company to Bokaro but it is false to say that the opposite party-appellant lived only for 20 days at Bokaro and further that she did not cooperate with the petitioner and his family members and separated herself



from domestic work. She also alleged that the petitioner-respondent threw hot tea on her face causing physical damaged which was tolerated by her hoping that situation would change. This all happened at her parents house at Bhagalpur. Thereafter, the petitioner-respondent returned back to Bokaro and on 22.07.2007, the opposite party-appellant got knowledge of filing of this case. She further alleged that the conduct of the petitioner-respondent was bad as he never wanted to bring the opposite party-appellant at Bokaro, whereas, the opposite party-appellant was always desirous to live at her matrimonial house with dignity.

On the basis of the pleadings of the parties, the family court framed the following issues :-

- (i) Is the suit as framed maintainable?
- (ii) Has the petitioner got valid cause of action for the suit?
- (iii) Is the suit barred by the law of limitation?
- (iv) Is the allegation made by the petitioner, genuine or not?
- (v) Is the petitioner entitled to get a decree for divorce dissolving the marriage between the parties?
- (vi) To what relief or reliefs, if any the petitioner is entitled for?



However, on perusal of the aforesaid issues, it does not appear that any specific issue was framed regarding the act of cruelty by the wife against the husband.

The petitioner-respondent has examined altogether four witnesses in support of his case. He examined himself as P.W. 4. The opposite party-appellant examined altogether 15 witnesses on her behalf. She examined herself as OPW-15.

While discussing the issue nos. 4 and 5 , the court below has recorded the statement made by the P.Ws. and OPWs in detail. It has continued till paragraph 24. However, though there is elaborate discussion regarding the statements made by both the sides while being examined as witnesses, however, surprisingly, no finding or reason has been recorded for reaching to the conclusion in paragraph 25 of the impugned judgment holding that the petitioner is entitled to get a decree for divorce by dissolving the marriage between the parties. There is absolutely no reasoning, no finding stating clearly as to how the court has reached to such conclusion and on basis of which ground as envisaged under Section 13 of the Hindu Marriage Act, 1955, the family court has dissolved the marriage between the parties.

In our view, dissolving marriage between the parties is a serious matter and, as such, for reaching to such conclusion



elaborate discussion and recording of reasons and findings on each and every issue was required to be done by the court below which has not been done. Thereafter, suddenly in the final paragraph, i.e., paragraph 28, it is stated that permanent alimony under Section 25 of the Hindu Marriage Act, 1955 is being fixed as Rs.5000/-per month to be given to the wife for her maintenance from the date of judgment. However, there is no discussion or reason or finding as to on what basis such amount has been fixed.

Thus, in our view, due to lack of any reason or finding recorded by the court below, the impugned judgment is not at all sustainable in law and, as such, the same is quashed and set aside.

However, the matter is remanded to the court below to take up the allegations which have been made on behalf of the petitioner-plaintiff in the plaint and also the statements made in the written statement of the opposite party-appellant and after appraisal of evidence of both sides, it would proceed to record specific reasons and findings and pass a fresh judgment thereafter.

It goes without saying that the parties would have to be given fresh opportunity of hearing in the matter. It is further made clear that the judgment would be required to be passed without being prejudiced by the earlier view which has been taken by the



family court in the judgment impugned in the appeal which has already been quashed and set aside.

In the result, this appeal stands allowed to the extent as indicated above.

The parties will bear their own costs.

(Dr. Ravi Ranjan, J)

(Prakash Chandra Jaiswal, J)

V.K.Pandey/-

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