

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.356 of 2015

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Kumar Ashutosh S/o Late Suresh Prasad Sinha Permanent resident of village Kileghat Wazitpur P.O. & P.S. Darbhanga, District- Darbhanga. Present Address Mohalla- Magardahi, Ward No- 15, P.O. & P.S. Samastipur, District- Samastipur.

.... Appellant

Versus

Smt. Aparna Kumari W/o Shri Kumar Ashutosh, D/o Shri Uma Shankar Prasad, Permanent resident of M/s India Paints, Quarter No. C/20-II Phase, Commercial Compound, Industrial Area, Adityapur, P.O. & P.S. Adityapur, District- Seraikela Kharswa, State of Jharkhand.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Rakesh Kumar Srivastava, Adv.
Mr. Dineshwar Prasad Singh, Adv.

For the Respondent/s : Mr. Abhimanyu Vatsa, Adv.
Mr. Rajni Kant Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date: 29-06-2018

Heard Mr. Rakesh Kumar Srivastava, learned counsel for the appellant and Mr. Abhimanyu Vatsa, learned counsel for the respondents.

This appeal filed under section 19 of the Family Courts Act, 1984 arises from a judgment and decree dated 30.7.2015 passed by the Principal Judge, Family Court, Samastipur in Divorce Case No. 225/2011, the application filed by the appellant herein invoking provisions of Section 13(1)(i-a) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') praying for dissolution of the marriage by a decree of divorce on grounds of cruelty, has been



dismissed.

The appeal was admitted after service of notice on the respondent vide order passed on 19.7.2017 and has been taken up for final hearing when the parties have been heard.

The facts as noted from the pleadings on record would confirm that the marriage between the contesting parties was performed on 31.5.2010 at Jamshedpur in the State of Jharkhand. It is an admitted position that after marriage the respondent moved to her matrimonial home and resided in the quarter of the elder brother of the appellant herein viz. Quarter No. M24/03, Telco Colony, Jamshedpur. Pleadings transpire that merely after a stay of 3 to 4 days at the matrimonial house that the respondent complaining of harassment by the family members of the appellant by dowry demands etc., returned to her parental house. In other words, the matrimonial relation lasted merely 3-4 days before the respondent returned to her house. It is again not in dispute that a mutual divorce petition under section 13B of 'the Act' was filed at the instance of the contesting parties herein before the Family Court at Jamshedpur giving rise to Divorce Case No. 240/2011. The record transpires that one of the conditions for such consent was a payment of an amount of Rs. 1,75,000/- stated to be the expenses incurred by the girl's family in the marriage by the appellant, which was paid to her, however a demand for further Rs.



1,75,000/- was made for appearance before the Family Court in the divorce case filed with mutual consent. This demand was not met by the appellant herein and the respondent refused to appear before the Family Court resulting in dismissal of the Divorce case on 16.9.2011 (Exhibit-1 in the present case). It is not in contest that since after return of the sole respondent to her parental house after 3-4 days stay in the matrimonial house, she never returned back and which factual position is not disputed nor there is any evidence on record to support any intention of her return. It is in these circumstances that the Divorce case in question was filed invoking provisions of Section 13(1)(i-a) of 'the Act' alleging cruelty on the part of the respondent.

It is during the course of proceedings before the court below that the parties resolved to dissolve the marriage with consent and when an application to such effect was filed in the court below. The condition for such consented divorce was a payment of Rs. 1,76,000/- by the appellant to the respondent, which was paid through draft. In the cross-examination before the court below on 27.7.2015 the respondent agreed to a divorce with consent. The court below taking note of the circumstances existing where the parties had not cohabited since after 6.6.2010 which is less than a week after the marriage performed on 31.5.2010; that a period of more than five years had lapsed since return of the respondent to her parent's house;



that records transpired the willingness of the parties to dissolve the marriage with consent, yet, going by the technicalities of the frame of the application, has proceeded to reject the same, inter alia, holding lack of evidence to support cruelty under section 13(1)(i-a) of 'the Act' as also holding that the consent by the parties would not alter the nature of the case. Feeling aggrieved the petitioner as the appellant is before this Court.

As observed at the outset we have heard learned counsel for the parties at length and also explored the possibility of a reunion which is not forthcoming, rather despite several adjournments, while an affidavit is filed by the appellant expressing poor financial condition for the purpose of permanent alimony, though the respondent has appeared through counsel Mr. Vats and who has taken pains to discuss the issue but expresses helplessness in absence of instructions to such effect. We thus proceed to examine the issues as it stands to record our opinion, whether the decree put to question can withstand the scrutiny.

The relevant facts accompanying the case taken on record by us does confirm that while the parties cohabited for less than a week since their marriage on 31.5.2010, after the return of the respondent on 6.6.2010 to her parent's house, she never came back to her matrimonial home nor has led evidence in support of her intention



whatsoever to return. The evidence is clearly lacking. In other words, a period of more than eight years having lapsed since the return of the respondent to her parent's house, the parties have never cohabited nor attempted by any party. On the contrary, the evidence is that attempt was made by the parties to dissolve marriage by consent which finds noted in the judgment and decree.

In the uncontested circumstances noted, we may usefully refer to the opinion of the Supreme Court expressed in the case of **Samar Ghosh v. Jaya Ghosh**, reported in (2007)4 SCC 511, to appreciate whether the circumstances taken note of, would come within the purview of 'mental cruelty' and for the purpose we deem it proper to reproduce the opinion expressed by the Supreme Court on the issue of cruelty which stands qualified at paragraph 101 of the judgment and sub-paragraph (xiv) is an answer to the issue posed herein:

“101(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

In such like situations, it may lead to mental cruelty.”

A number of situation stands discussed by the Supreme



Court which may or may not constitute mental cruelty and which in the words of the Supreme Court is not exhaustive, nonetheless the expression at sub-para (xiv) applies on all fours to the facts existing in the present case.

We have consciously not entered the allegation part of the contest because in our opinion, the intent of the parties as noted by us, would serve a better guide in reaching a just conclusion. We are satisfied that in the undisputed facts noted, the opinion of the Supreme Court present at sub-paragraph (xiv) of paragraph 101 of the judgment in **Samar Ghosh** (supra) would cover the present case to bring it within the purview of Section 13(1)(i-a) of 'the Act'.

The view expressed by the Supreme Court in the case of **Samar Ghosh** (supra) came up for consideration in the case of **K. Srinivas Rao v. D.A.Deepa**, reported in 2013(1) PLJR (SC) 321, and while allowing the plea of divorce, following is the opinion expressed at paragraph 26:

“26. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all



purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree."

No doubt, the plea of irretrievable breakdown of marriage, despite opinion expressed through various judgments, is yet to enter the Statute book but then, Courts would not shut its eyes to the fact situation to pass such orders which in the words of the Supreme Court results in an artificial reunion.

For the reasons so discussed above, we are persuaded to allow the appeal of the appellant while holding that the reasons assigned by the learned court below to reject the prayer is strictly not in tune with the legal proposition. Accordingly, the judgment and decree of the court below dated 30.7.2015 passed by the Principal Judge, Family Court, Samastipur in Divorce Case No. 225/2011 cannot be upheld and is accordingly set aside.

The application filed by the appellant- petitioner under section 13(1)(i-a) of 'the Act' is allowed. Accordingly, the marriage between the parties is dissolved by a decree of divorce.

In so far as the issue of permanent alimony is concerned, taking note of the earlier payments made by the appellant, as also the intent shown by him in the affidavit so filed in the present



proceedings, wherein the appellant has shown willingness to make payment of Rs.25,000/- and which has also been presented in the form of Bank draft drawn on Allahabad Bank in favour of the respondent today, we are persuaded to hold that substantial justice would be met by directing the appellant to make payment of a further sum of Rs.25,000/- i.e. in total of a sum of Rs.50,000/-, to the respondent as a final amount towards permanent alimony and we direct accordingly.

Let the draft of Rs.25,000/- be handed over to Mr. Abhimanyu Vats, learned counsel appearing for the respondent, who shall issue a receipt on her behalf.

In so far as the balance sum of Rs.25,000/- is concerned, let steps be taken by the appellant for its payment to the respondent expeditiously and preferably within eight weeks from today.

The appeal is allowed.

Let a decree of divorce be accordingly drawn.

Let the L.C.R. be returned to the court below in sealed cover forthwith.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.07.2018
Transmission Date	NA

