

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.402 of 2015

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Pragya Jha, D/o Shri Harish Chandra Chaudhary, W/o Mr Rajneesh Kumar Jha, R/o A/20, Siddharth Kunj, Plot no. 17 & Sector - 7, Dwarika, New Delhi, P.O. & P.S. - Dwaika, Distt. - New Delhi, Pin - 110075.

.... Appellant/s

Versus

1. Rajneesh Kumar Jha, S/o Shri Deo Nandan Jha, R/o Mohalla - New Patna Colony, South East of Health Research Institute, Anisabad, P.S. - Beur, Patna - 800002, Distt:- Patna.

... Petitioner..... Respondent 1st Set.

2. Shri Harish Chandra Chaudhary, S/o Late Palakdhari Chaudhary, R/o New Ganga Sagar Colony, Madarpur, P.S. - Laheriyasari, Distt:- Darbhanga (Bihar).

3. Smt. Sumedha Chaudhary, W/o Shri Harish Chandra Chaudhary, R/o New Ganga Sagar Colony, Madarpur, P.S. - Laheriyasari, Distt:- Darbhanga (Bihar).

.... Respondents 2 & 3 Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Kumar Jha, Adv.
Mr. Devi Das Srivastava, Adv.
Mr. Saurav Anand, Adv.

For the Respondent/s : Mr. Dineshwar Mishra, Adv.
Mr. Surender Mishra, Adv.
Mr. Rohan Priyam Sahay, 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: 31-08-2018

Heard Mr. Ashok Kumar Jha, learned counsel appearing on behalf of appellant and Mr. Dineshwar Mishra, learned counsel appearing on behalf of the respondents who are petitioners before the Family Court below.

This appeal filed under Section 19(1) of The Family Courts Act, 1984 arises from the judgment and decree passed by the Principal Judge, Family Court, Patna in Matrimonial Case no.213 of



2012 dated 02.07.2014, whereby it is upholding the allegation of desertion made by the respondent-petitioner by invoking the provisions of section 13(1) (1-b) of the Hindu Marriage Act, 1955 that the marriage has been dissolved.

The judgment and decree of the court below is ex-parte and according to Mr. Dineshwar Mishra, learned counsel appearing for the respondent-petitioner, it is because the appellant kept changing her address that the respondent-petitioner had no other option but to implead her by her parental address at Muzaffarpur and since the notice issued at her parental address also did not bear any result that substituted service by paper publication was also invoked, yet the appellant-respondent did not appear in court to contest. The Family Court below accepting the plea of desertion as well as on service of notice has decreed the matrimonial case in favour of respondent-petitioner and hence this appeal by the appellant who was respondent before the court below.

Having considered the rival submissions of the parties, we are of the view that the statement made by the appellant at paragraphs 9 to 14, is itself sufficient to allow this appeal, when read alongside the written statement filed by the respondent-petitioner in Case no.504/1 of 2013 in the court of the Magistrate at Dwarka Court in Delhi in a matter arising from Section 125 of the Code of Criminal Procedure.



Two aspects of the matter would put at rest any amount of explanation by the respondent-petitioner that he took sufficient steps for service of notice are as follows:

(a) Even when a written statement was filed by the respondent-petitioner in the Maintenance Case which was instituted subsequent to the institution of the divorce proceedings at Patna in Matrimonial Case No.213 of 2012, yet the petitioner made no reference of the pending divorce case at Patna;

(b) The judgment and decree of divorce, impugned herein, was passed by the Family Court at Patna on 02.07.2014. The respondent-petitioner registered his appearance in the Maintenance Case, before the Family Court at Dwarka much prior thereto and also participated in the mediation proceedings on several dates which is mentioned at paragraph-14 of the appeal and not contested, yet neither the court at Delhi was informed about the pending divorce proceeding at Patna nor the appellant herein was made aware of it.

The facts noted confirm that there is clear suppression by the respondent-petitioner who has approached the court below with soil hands in so far as the manner of impleadment of the appellant as respondent in court below is concerned by arraigning her by her parental address when there is nothing left for speculation that the respondent-appellant was staying in Delhi since after 2008, the



parties were litigating at different levels at Delhi and the respondent-petitioner had participated in those proceedings.

Mr. Mishra, learned counsel appearing for the respondent-petitioner though has tried to persuade this Court that the appellant did not divulge her correct address at Delhi and that the respondent had no clue about the address at Dwarka but these submissions have no weight and do not answer as to why the notice through paper publication was made at Muzaffarpur when the parties were litigating in Delhi.

The facts discussed above, are sufficient to hold that the respondent-petitioner has obtained the decree surreptitiously and has consciously ensured that the appellant was denied notice or information about the pending divorce case. The ex-parte decree thus becomes unsustainable by the conduct of the respondent-petitioner and the appellant has been wronged. We accordingly set aside the judgment and decree of the Principal Judge, Family Court, Patna in Matrimonial Case no.213 of 2012 impugned herein.

The matter is remitted to the court below for proceeding afresh in the matter but before recording a final opinion on the inter-party contest we would expect the court below to explore the possibility of resolution of the dispute considering that the contesting parties are educated experienced adults. The respondent-petitioner would be advised to make appropriate amendment in the



party position in the court below. That the appellant is now aware of the matter which is being remitted to the court below, let the parties appear before the Family Court below at Patna on 24th of September, 2018 when the court below would proceed for disposal of the matter afresh and in accordance with law.

Since the date for appearance is fixed in presence of learned counsel appearing for the parties and even the appellant is in attendance before this Court, it is due notice to her to register her appearance in the court below on 24th of September, 2018.

This appeal is allowed together with costs quantified at Rs.10,000/- which should be paid by the respondent-petitioner to the appellant on or before the parties register their appearance before the court below on 24th of September, 2018.

Let the records of the matrimonial case be returned immediately to the court below in a sealed cover.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

SKPathak/Anjula

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05-09-2018
Transmission Date	NA

