

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.107 of 2018

Priya, wife of Bipul Ranjan, Daughter of Shri Suresh Chandra, Resident of Mohalla Mahi Khandak, Amber, P.S.- Bihar, District- Nalanda.

... .. Appellant/s

Versus

Bipul Ranjan, Son of Sri Nawal Kishore Prasad, Resident of Mohalla - Bhaisasur Patel Nagar, Nala Road, P.S.- Laheri, District - Nalanda.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.

Md. Imteyaz Ahmad, Adv.

For the Respondent/s : Mr. Ram Prasad Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 17-04-2019

Heard Mr. Ajay Kumar Thakur, learned counsel for the appellant and Mr. Ram Prasad Singh, learned counsel for the respondent.

The present appeal is filed against the judgment and decree dated 12.01.2018/27.01.2018, respectively, passed by learned Principal Judge, Family Court, Nalanda at Bihar Sharif in Matrimonial Divorce Suit No. 201 of 2013, filed by the appellant/plaintiff, with a prayer for dissolution of marriage between the appellant and respondent on the ground of cruelty,



desertion, non-consummation of conjugal life and the respondent having extra marital relationship, but the suit has been dismissed.

The present appeal was filed with a delay of one day and for condonation of delay I.A. No. 2728 of 2018 was filed. The delay was condoned vide order dated 19.07.2018. Consequently interlocutory application was allowed.

The factual matrix of the case is that the appellant filed Matrimonial Divorce Suit No. 201 of 2013 before Principal Judge, Family Court, Nalanda at Biharsharif with a prayer for dissolution of marriage basically on the ground of cruelty. The appellant was married with the respondent on 29.06.2012. After the marriage, the appellant went to the matrimonial house but the respondent was not ready to lead conjugal life which caused great mental torture to the appellant. During the appellant's stay at her in-law's house, she came to know that the respondent is having love affair with another girl and he wanted to marry the said girl, but only due to lust of property and dowry, the respondent performed marriage with the appellant, which further caused torture to the appellant. The appellant tried her best to resolve the issue by convincing her husband, but after 5-6 days of marriage, the husband of the appellant went to the



place of his posting at Digboi in Assam as he was employed in Indian Oil Corporation. Subsequently, the parents of the appellant talked to the parents of the respondent, but instead of resolving the issue, the parents of the respondent complained of appellant's rude behaviour. The respondent did not talk to the appellant on mobile phone. On 15.05.2013, the respondent came to his native place, when the appellant was brought to her matrimonial house by her father, but the in-law's people continued torturing the appellant and put pressure for transfer of the land situated at Bihar Sharif, failing which, threat was given that the appellant will not be allowed to live in the matrimonial house and respondent will perform second marriage. Ultimately the appellant became depressed and conveyed everything to her father, who tried to pacify the issue on 17.5.2013, but it did not bear any positive result. The respondent, thereafter, went to his place of posting on 19.03.2003, thereafter the appellant came back to her parents' house on 25.05.2013 and narrated everything to her parents and since there was no response from respondent's side, the appellant decided for getting the marriage dissolved and ultimately the matrimonial suit was filed on the ground of cruelty, desertion and non-consummation of conjugal life.



On issuance of notice, respondent had appeared before the learned court below and filed his written statement to the effect that the application filed under Section 13 of the Hindu Marriage Act is based on frivolous allegation and is barred by waiver, estoppel and acquiescence. The respondent has also denied receiving of any dowry and allegation of having affairs with some other girl. He further alleged that in fact, the appellant has illicit relationship with her maternal brother, namely, Pankaj Kumar since last 2 to 3 years and due to adamant behaviour of the appellant, the marriage was not consummated and accordingly, on the wish of the appellant, she was allowed to go to her parents' house on 06.07.2012 and thereafter, on 12.07.2012, the respondent joined his duty. The respondent again came to his house on the occasion of 'Grih Pravesh', but in spite of invitation being given to the appellant, she did not come to the matrimonial house. It is further stated that Mause and Mausie of the appellant have evil eye over the property of the appellant's father, as a result, they allowed Pankaj Kumar to establish illicit physical relationship with the appellant.

The following issues have been framed by learned court below on 13.05.2013, which reads as follows:-



“4. उभय पक्षों के अभिवाक के आधार पर निम्नलिखित वाद बिंदु तैयार किए गए।

1. क्या इस रूप में वाद संधार्य हैं ?
2. आवेदिका को वाद का वाद कारण मौजूद है ?
3. क्या यह वाद—विबंध, अभित्यजन आज के सिद्धांतों से वाधित है ?
4. क्या विपक्षी द्वारा अपनी पत्नी को अवैध संबंध के कारण त्याग दिया गया है ?
5. क्या आवेदिका द्वारा कही गई प्रताड़नाएं, क्रूरता एवं अभित्याग की कहानी हुई है ?
6. क्या विपक्षी द्वारा आवेदिका के जारता में रहने की कहानी हुई ?
7. क्या विपक्षी एवं उसके परिवार की लालची नजरें आवेदिका के पिता के संपत्ति पर है।
8. क्या आवेदिका विवाह—विच्छेद अज्ञप्ति प्राप्त करने की अधिकारीनी है ? ”

On behalf of the plaintiff/appellant, five witnesses have been examined, namely, Amrendra Prasad Singh, Archana Kumari, Meena Devi, Suresh Chandra and Priya, whereas from the respondent's side, six witnesses have been examined, namely, Raj Kumar Prasad, Bimal Kumar Singh, Ramanuj Kumar, Ajay Raj, Nawal Kishore Prasad and Bipul Ranjan and after hearing learned counsels for both the parties, by the impugned judgment, the matrimonial suit has been dismissed.

Learned counsel for the appellant submits that from the impugned judgment, it appears that learned Court below has neither considered the issue framed in correct perspective nor considered the evidence adduced from either parties and by a cryptic judgment, the matrimonial suit has been dismissed.

Learned counsel for the respondent admits that the



issue has not been decided in corrective perspective, as the suit has basically been dismissed on the ground that the appellant has failed to disclose the name of the girl with whom the respondent is having illicit relationship, whereas the respondent has disclosed the name of the boy, namely, Pankaj Kumar, with whom the appellant has illicit relationship. It is further submitted that learned Court below has considered the relevant evidence on record and has come to a conclusive finding that the suit as framed is not worthy consideration, however, he admits that elaborate discussion of evidence has not been made in the judgment.

Before considering the issue involved in the present case, this Court would like to discuss the basic principle on which the judicial system works. The entire journey of judge is to discern the truth from the pleadings, documents and arguments of the parties. In the case of **Mohanlal Shamji Soni Vs. Union of India**, reported in **1991 Supp(1) SCC 271**, the Apex Court held that the Presiding Officer of a Court should not simply sit as a mere umpire at a contest between two parties and declare at the end of the conclusion of the case, as to who has won and who has lost or there is no any legal duty of his own in finding the truth, rather, it is the legal duty of the presiding



officer to take an active role in the proceedings in finding out the truth and administering justice. It is a well accepted and settled principle that a court must discharge its statutory functions, whether discretionary or obligatory according to law in dispensing justice because it is the duty of a court not only to do justice but also to ensure that justice is being done.

Every litigant is expected to state truth before the law court whether it is pleadings, affidavits or evidence. The pleadings must set forth sufficient factual details to the extent that it reduces the ability to put forward a false or exaggerated claim or defence. The pleadings are foundations of litigation and thereafter comes the stage of framing of issue. The framing of issues is a very important stage of a civil trial. It is imperative for a judge to critically examine the pleadings of the parties before framing of issues. Rule 2 of Order X CPC enables the Court, in its search for the truth, to go to the core of the matter, which comes at the stage of leading of oral evidence and producing of documentary evidence in support of the respective claim of the parties.

In the present case, it appears that altogether eight issues have been framed as quoted above, but paragraph no.5 of the impugned judgment reflects that issue nos. 4, 5 and 6 have



jointly been considered and the same have been decided against the appellant on the ground that she failed to disclose the name of the girl with whom the respondent has illicit relationship, whereas in paragraph no.6, issue nos. 7, 8 and 9 have jointly been considered and have been decided against the appellant on the ground that the plaintiff/appellant has not produced any evidence that the respondent was trying to grab the property. Paragraph no.7 of the impugned judgment reflects that issue nos. 1, 2 and 3 have not been considered treating it to be a formal issues and in view of this Court, the Court has failed to discharge his duty and in a cryptic judgment, the Court has not even mentioned that how many witnesses have been examined from the plaintiff's side and how many witnesses have been examined from the respondent's side, which shows mechanical approach of the learned Court below.

A three judge bench of the Supreme Court in the case of **Madhukar and Ors Vs. Sangam and Ors**, reported in **(2001) 4 SCC 756**, while deprecating the manner of deciding a First appeal by the High Court, has held that the Court must give reason in support of the stand and if the Court does not fulfill its obligation, the parties would not get true benefit of first appeal, which is a valuable right as the parties have right to



be heard on the question of law and the fact as well, since the High Court allowed the appeal setting aside the judgment of dismissal of the trial court without discussing the evidence on record. Paragraph no.5 of the judgment reads as follows:-

“5. We have carefully perused the judgment and decree of the High Court in the first appeal. We find that substantial documentary evidence had been placed before the trial court including certified copies of certain public records besides copy of the judgment and decree of the earlier suit (O.S. No. 93/1971). Oral evidence had also been led by the parties before the trial court, which was noticed and appreciated by the trial court. However, the impugned judgment in the first appeal, is singularly silent of any discussion either of documentary evidence or oral evidence. Not only that, we find that though the trial court had dismissed the suit on ground of limitation as also on the ground that the decision in the earlier suit (O.S No. 93/1971) operated as *res judicata* against defendant 1 only the High Court has not even considered, much less discussed the correctness of either of the two grounds on which the trial court had dismissed the suit. Siting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. It has failed to discharge the obligation placed on a first appellate court. The judgment under appeal is so cryptic that none of the relevant aspects have even been noticed. The appeal has been decided in a very unsatisfactory manner. First appeal is a valuable right and the parties have a right to be heard both on questions of law and of facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings.”



In the similar manner, in the case of **Santosh Hazari Vs. Purushottam Tiwari**, reported in **(2001) 3 SCC 179**, the Apex Court, while considering the judgment of the first appeal, held that the judgment of the appellate court must reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth and pressed by the parties for decision of the appellate court. Paragraph no. 15 of the judgment reads as follows:-

“15. A Perusal of the judgment of the trial Court shows that it has extensively dealt with the oral and documentary evidence adduced by the parties for deciding the issues on which the parties went to trial. It also found that in support of his plea of adverse possession on the disputed land, the defendant did not produce any documentary evidence while the oral evidence adduced by the defendant was conflicting in nature and hence unworthy of reliance. The first appellate court has, in a very cryptic manner, reversed the finding on question of possession and dispossession as alleged by the plaintiff as also on the question of adverse possession as pleaded by the defendant. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is there in open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind, and record findings supported by reasons, on all issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. The task of an appellate court affirming the findings of the trial court is an easier one. The appellate court



agreeing with the view of the trial court need not restate the effect of the evidence or reiterate the reasons given by the trial court; expression of general agreement with reasons given by the court, decision of which is under appeal, would ordinarily suffice. We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate court for shirking the duty cast on it. While writing a judgment of reversal the appellate court must remain conscious on two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial court must weigh with the appellate court, more so when the findings are based on oral evidence recorded by the same presiding Judge who authors the judgment. This certainly does not mean that when an appeal lies on facts, the appellate court is not competent to reverse a finding of fact arrived at by the trial Judge. As matter of law if the appraisal of the evidence by the trial court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate court is entitled to interfere with the finding of fact. The rule is -- and it is nothing more than a rule of practice -- that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial judges notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lie, the appellate court should not interfere with the finding of the trial judge on a question of fact. Secondly while reversing a finding of fact the appellate court must come into close quarter with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court



had discharged the duty expected of it. We need only remind the first appellate court's of the additional obligation cast on them by the scheme of the present section 100 substituted in the code. The first appellate court continues, as before, to be a final court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first appellate court is also a final court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now seized to be available to correct the errors of law or the erroneous findings of the first appellate court even on questions of law unless such question of law be a substantial one."

It is well settled law as held in the case of **Madhusudan Das Vs. Narayanibai**, reported in (1983) 1 SCC 114 that if the appraisal of the evidence of the trial court suffers from material irregularity or is based on the inadmissible evidence or on conjectures and surmises, the appellate court is entitled to interfere with the finding of fact.

In the present case, the evidence of either parties has not been considered at all. From the judgment, it appears that the trial court has not referred to the evidence of even a single witness on any issue. Above all the impugned judgment does not suggest as to how many witnesses have been adduced by either party. As a result, none of the issues have been considered or decided in its true perspective due to non-conscious



application of judicial mind by the learned Court below. We are thus dismayed to find the cryptic manner, in which the suit has been dismissed.

It is well settled law as held in the case of **State of Uttranchal and Anr Vs. Sunil Kumar Vaish and Ors**, reported in **(2011) 8 SCC 670** that the Courts' clear reasoning and analysis are basic requirements in a judicial determination when parties demand it so that they can administer justice justly and correctly. The judicial decision must be perceived by the parties and by the society at large, as being the result of a correct and proper application of legal rules, proper evaluation of the evidence adduced and application of legal procedure. Paragraph nos. 18 and 19 of the judgment read as follows:-

“18. Judicial determination has to be seen as an outcome of a reasoned process of adjudication initiated and documented by a party based mainly on events which happened in the past. Courts' clear reasoning and analysis are basic requirement in a judicial determination when parties demand it so that they can administer justice justly and correctly, in relation to the findings on law and facts. Judicial decision must be perceived by the parties and by the society at large, as being the result of a correct and proper application of legal rules, proper evaluation of the evidence adduced and application of legal procedure. The parties should be convinced that their case has been properly considered and decided.

19. Judicial decisions must in principle be reasoned and the quality of a judicial decision depends principally on the



quality of its reasoning. Proper reasoning is an imperative necessity which should not be sacrificed for expediency. The statement of reasons not only makes the decision easier for the parties to understand and many a times such decisions would be accepted with respect. The requirement of providing reasons obliges the judge to respond to the parties' submissions and to specify the points that justify the decision and make it lawful and it enables the society to understand the functioning of the judicial system and it also enhances the faith and confidence of the people in the judicial system."

For the reasons discussed herein above, we are unable to uphold the present judgment. As it lacks reasonable judicial considerations of the issue involved and the evidence adduced, as a result, we are not inclined to call for the records as our careful consideration of the judgment passed in the matrimonial suit shows that it is hopelessly fall short of consideration which are expected from the court of learned Principal Judge, Family Court.

We, accordingly, set aside the impugned judgment and decree dated 12.01.2018/27.01.2018, respectively, passed by learned Principal Judge, Family Court, Nalanda at Biharsharif, passed in Matrimonial (Divorce) Suit No. 201 of 2013 and remand the matrimonial suit to the learned Principal Judge, Family Court, Nalanda at Biharsharif for fresh judicious consideration of the issues and evidence on record in



accordance with law expeditiously.

Accordingly, the present appeal is allowed.

(Dinesh Kumar Singh, J)

(Anil Kumar Upadhyay, J)

Amrendra/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	21/04/2019
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