

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1122 of 2016

In
Civil Writ Jurisdiction Case No.18828 of 2015

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Shri Ashish Ranjan Kumar Mishra @ Shri Ashish Ranjan Kumar @ Munna,
son of Sri Prabhat Kumar Mishra, Resident of Village Parari, P.O. Taranagar,
P.S. Bihta, District Patna

... .. Appellant/s

Versus

Smt. Ruby Devi, wife of Ashish Ranjan Kumar Mishra @ Munna, D/o Ravi
Shankar Pathak, Resident of at P.O. + P.S.-Bihta, District Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajesh Kumar, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 11-09-2018

Heard learned counsel for the appellant.

This appeal is directed against the order dated
04.08.2015 passed in Matrimonial Case No.5379 of 2014 by the
Principal Judge, Family Court, Patna by which the aforesaid
matrimonial case for mutual divorce was dismissed as infructuous
on the ground that the wife/opposite party had withdrawn her



consent for mutual divorce filed under Section 13 B of Hindu Marriage Act.

It appears that a Matrimonial Case No. 54 of 2013 was filed by the appellant under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as “the Act”) for restitution of conjugal rights. Thereafter, there was some agreement between the parties and a petition under Section 13(B) of the Act was filed by the parties for grant of divorce on mutual consent.

The appellant-husband had withdrawn that matrimonial case for restitution of conjugal rights. Obviously, since both of them had agreed that they would be parting their ways and would not remain within the nuptial tie.

The joint petition spelt out five terms and conditions. However, subsequently, the consent was withdrawn by the wife and, as such, the Principal Judge, Family Court, Patna, after recording the withdrawal of consent, has dismissed the divorce case filed under Section 13(B) of the Act.

Notices were issued in limitation matter but no one had appeared on behalf of the wife. However, delay was condoned. Thereafter, the matter has come for its hearing on point of admission. Now, it has to be seen whether this matter requires



issuance of notice upon the respondent or it can be disposed of at this stage itself.

Learned counsel for the appellant has submitted that though the withdrawal petition was filed, it was neither verified nor affidavited by the respondent. We have seen the records and, as such, his assertion appears to be correct but the petition is signed by the respondent-wife and learned counsel for the appellant has not been able to show any provision of law under which such withdrawal has to be filed on affidavit or under verification. The relevant provision of law, i.e., Section 13(B) of the Act is extracted and quoted as under for better appreciation of the matter:-

“13-B. Divorce by mutual consent.-(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the District Court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976, on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said



date, if the petition is not withdrawn in the mean time, the Court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.”

From perusal of the aforesaid provision, it is apparent that even after filing a petition for grant of divorce by mutual consent, both parties are required to make a motion within 6 months and 18 months from the date of filing of such application and confirm their views for annulment of marriage on mutual consent but not, if in the meantime, one of the parties withdraw the consent. In the present case, since one of the parties has admittedly withdrawn the consent, in our view, the stand of the court below cannot be faulted with. Even if it is assumed that the withdrawal on consent was not on affidavit, the question would be as to who could be aggrieved by that ? Obviously, the wife on whose behalf such petition was filed but the wife does not appear to be aggrieved by filing of the aforesaid petition for withdrawal on consent at all as she has not filed any appeal against such order dismissing the matrimonial case.

In such a situation, in our view, this appeal has no merit at all, and the same can be dismissed even without notice to the other side.



As a result, this appeal is dismissed. However, there would be no order as to costs.

(Dr. Ravi Ranjan, J)

(Madhuresh Prasad, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
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