

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.433 of 2018

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Sangita Kumari Bharti wife of Mithilesh Kumar daughter of Ganga Prasad @
Ganga Paswan @ Ganga Ram, resident of Village- Mamarakpur Rasalpur,
P.S.- Bind, District- Nalanda.

... .. Appellant/s

Versus

Mithilesh Kumar son of Sri Ramprit Das, resident of Village- Utarnawan,
P.S.- Rahui, District- Nalanda. At present Mohalla- Baignabad, P.S.-
Biharsharif, District- Nalanda.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Anil Kumar
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 25-09-2020

Interlocutory Application No. 1 of 2019

The aforementioned Interlocutory Application has been
filed for condonation of delay of 3 years 10 months 27 days in
filing the present Miscellaneous Appeal.

Though day-to-day delay has appropriately not been
explained, but in view of the ratio laid down by the Supreme
Court in the case of Esha Bhattacharjee Vs. Managing Committee
of Raghunathpur Nafar Academy and Ors. Reported in (2013) 12
SCC 649 = 2014(1) PLJR 290 to the effect that the exercise of
judicial discretion of the Court while considering to condone the



delay, it should be exercised in positive manner if there is no presumption that the delay is occasioned deliberately or on account of culpable negligence and since the substantial justice is the paramount and pivotal, the technical considerations should not be given undue and uncalled for emphasis and that there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while considering an application for condonation of delay, the delay in filing the present appeal is hereby condoned.

M.A. No. 433 of 2018

Heard learned counsel for the appellant.

The present Miscellaneous Appeal has been preferred for setting aside the judgment and decree dated 20.5.2014 passed by the learned Principal Judge, Family Court, Nalanda at Biharsharif in Divorce Case No. 200 of 2012 whereby the marriage between the appellant and respondent has been dissolved on the basis of mutual consent under Section 13-B of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act).

The factual matrix of the case is that the marriage of the appellant and the respondent was solemnized on 26.5.1998 as per Hindu rites and customs. For a considerable period, they led a happy conjugal life. In 2009, the husband of the appellant got employment in Central Government and thereafter the respondent-



husband filed Matrimonial (Divorce) Case No. 133 of 2011 in the Court of the learned Principal Judge, Family Court, Nalanda at Bihar Sharif under Section 13 of the Act with a prayer for dissolution of marriage on the ground of cruelty and desertion. However, subsequently, on 17.9.2011, a joint compromise petition was filed with the signature of both the appellant and the respondent stating that the differences between them have been settled amicably and they are enjoying the happy conjugal life. Accordingly, the Matrimonial (Divorce) Case No. 133 of 2011 was disposed of by the learned Principal Judge, Family Court, Nalanda vide judgment dated 17.9.2011 in terms of the compromise. Thereafter, the respondent-husband filed Matrimonial (Divorce) Case No. 200 of 2012 on 1.9.2012 before the learned Principal Judge, Family Court, Nalanda under the provisions of Section 13-B of the Act. The said suit was admitted vide order dated 22.9.2013.

The matter was referred to Lok Adalat vide order dated 14.12.2013 where attempt was made to resolve the issue. The order dated 21.12.2013 reflects that both the parties were ready to resolve the issue but the Lok Adalat directed for appearance of the parents of both sides. The matter was adjourned to 20.5.2013. On 20.5.2013, an application was filed on behalf of both the appellant



and the respondent that the parents of both sides are not willing to appear before the Court since they felt that the appellant and the respondent are free to express their views. Consequently, vide order dated 20.5.2014 the learned Principal Judge, Family Court, Nalanda sought to mediate the issue between the parties but both the appellant and the respondent submitted that they have filed an application under Section 13-B of the Act with their consent and accordingly, the marriage between the parties was directed to be dissolved with mutual consent. Ultimately, the decree was prepared, which is under challenge in the present Miscellaneous Appeal basically on the ground that by playing fraud, with ulterior motive, the judgment and decree has been obtained. The appellant never instructed any one to file such matrimonial suit with consent.

Having heard learned counsel for the appellant, from the materials on records and the pleadings of the appellant, it appears that the appellant has not denied the filing of the Matrimonial Suit No. 200 of 2012 with the signature of the appellant and the respondent. The ground no. IX of the memo of appeal suggests that impliedly the appellant has admitted the filing of application under Section 13-B of Hindu Marriage Act, but it was not filed with her free will which reads as follows:



“For that the appellant has not filed the matrimonial case with her free will.”

From the order sheet brought on record by the appellant, it appears that the appellant and the respondent not only filed several petitions and affidavits with their joint signature, like, the plaint of the suit, separate affidavit of the appellant, rather in Matrimonial Suit No. 200 of 2012, the petition was filed on 20.5.2014 to the effect that their parents do not want to appear before the Court and thereafter, in the order dated 20.5.2014 the learned Court below has recorded the said fact as -

“Punah Samjhauta ka prayas kiya gaya parantu samjhauta biphala raha. Ubhay paksha saath rahne ko taiyar nahi hai”

Order VI of the Code of Civil Procedure (hereinafter referred to as the Code) deals with the pleading i.e. the plaint or written statement. Order VI Rule 4 of the Code provides the particulars to be given where necessary – i.e., in all cases where the party pleading relies on any misrepresentation, fraud, breach of trust, willful default or undue influence, the same should be stated in the pleadings. In none of the petitions filed, the appellant has pleaded about fraud.

Order XXIII Rule 3 deals with the compromise of suit which mandates that where it is proved to the satisfaction of the



Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith but where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question of such disagreement. But, the appellant never raised such issue. The appellant ought to have filed an application under Section 151 of the Code before the learned Principal Judge, Family Court, Nalanda questioning the legality and validity of the compromise as has been held in the case of Banwari Lal Vs. Chando Devi (Smt.) (Through LRS.) and Anr., reported in (1993) 1 SCC 581. Paragraph 14 of the judgment reads as follows:

“14. The application for exercise of power under proviso to Rule 3 of Order 23 can be labelled under Section 151 of the Code but when by the amending Act specifically such power has been vested in the Court before which the petition of compromise had been filed, the power in appropriate cases has to be exercised under the said proviso to Rule 3. It has been held by different High Courts that even after a compromise has been recorded, the court concerned can entertain an application under Section 151 of the Code, questioning the legality or validity of the



compromise. Reference in this connection may be made to the cases *Tara Bai (Smt) v. V.S. Krishnaswamy Rao* [AIR 1985 Kant 270 : ILR 1985 Kant 2930] ; *S.G. Thimmappa v. T. Anantha* [AIR 1986 Kant 1 : ILR 1985 Kant 1933] ; *Bindeshwari Pd. Chaudhary v. Debendra Pd. Singh* [AIR 1958 Pat 618 : 1958 BLJR 651] ; *Mangal Mahton v. Behari Mahton* [AIR 1964 Pat 483 : 1964 BLJR 727] and *Sri Sri Iswar Gopal Jew v. Bhagwandas Shaw* [AIR 1982 Cal 12] where it has been held that application under Section 151 of the Code is maintainable. The court before which it is alleged by one of the parties to the alleged compromise that no such compromise had been entered between the parties that court has to decide whether the agreement or compromise in question was lawful and not void or voidable under the Indian Contract Act. If the agreement or the compromise itself is fraudulent then it shall be deemed to be void within the meaning of the explanation to the proviso to Rule 3 and as such not lawful. The learned Subordinate Judge was perfectly justified in entertaining the application filed on behalf of the appellant and considering the question as to whether there had been a lawful agreement or compromise on the basis of which the court could have recorded such agreement or compromise on February 27, 1991. Having come to the conclusion on the material produced that the compromise was not lawful within the meaning of Rule 3, there was no option left except to recall that order.”

In our considered view, the appellant cannot raise the question of fraud for the first time in the present appeal,



particularly, in view of the fact that the appellant has neither denied her signature on the plaint filed under Section 13-B of the Act, nor has she denied her appearance before the Court and praying for dissolution of marriage.

In the circumstances, this Court finds that no specific material has been brought on record to substantiate that any fraud has been played upon the appellant. Hence, the present Appeal has no merit.

Accordingly, this Miscellaneous Appeal is dismissed.

(Dinesh Kumar Singh, J)

(Arvind Srivastava, J)

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CAV DATE	
Uploading Date	
Transmission Date	

