

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.323 of 2015

Vandana @ Vandana Mishra D/o Paras Nath Tiwari resident of Permanent and Present -Mahadewa Colony Behind Chiraighar , Swami Viveka Nand Path New Basti Siwan , P.S. & District - Siwan.

... .. Appellant

Versus

Anil Mishra son of Dular Mishra R/o Village Permanent and Present Surwal, P.O. Rahimpur P.S Khampar, District - Deoria(U.P)

... .. Respondent

Appearance :

For the Appellant	:	Mr. Yogendra Prasad Sinha
For the Respondent	:	Mr. Irshad Ahmad Khan

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 04-01-2019

Heard Mr. Yogendra Prasad Sinha, learned counsel appearing for the appellant and though having appeared through counsel, Mr. Irshad Ahmad Khan, there is no representation on behalf of the respondent when the matter is taken up for hearing and disposal.

This appeal, under section 19 of the Family Courts Act, 1984 arises from the judgment and decree dated 05.05.2015, passed by the Principal Judge, Family Court, Gopalganj, in Matrimonial Case No. 94 of 2014, whereby the suit filed under



section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') was decreed *ex-parte* and the marriage in between the parties was dissolved on payment of alimony amount of rupees two lakhs for the life support of the appellant.

In the nature of dispute inter-party put up for consideration before this Court as well as the stage at which it rests, we do not deem it proper to go into the merits of the case because the appellant-herein has very clearly expressed before this Court, as recorded in the order dated 26.09.2018 that in the changed circumstances there was no question of living together and that she was pressing the appeal only for enhancement of the alimony amount by way of One Time Settlement keeping in view that she is living with a minor child born from the wedlock.

A co-ordinate Bench taking note of the grievance put by the appellant which stands recorded in the order dated 26.09.2018, referred the matter for conciliation/mediation before the Patna High Court Mediation and Conciliation Centre and the parties were directed to appear. The report of the Mediator is on record and reports a failure.

As we have already recorded above, though Mr. Sinha appears for the appellant, the evasive nature of the respondent is confirmed by the absence of his counsel. Mr. Sinha



while submitting that the respondent has already performed a second marriage consequent upon the decree of divorce reiterates the submission which is recorded in the order dated 26.09.2018 limiting the grievance raised in this appeal to the quantum of the permanent alimony amount awarded by the Court below.

It is the submission of Mr. Sinha that since the decree of divorce was passed *ex-parte*, *several* relevant considerations, which was necessary for determination of a justful permanent alimony amount, went unnoticed by the court below. It is submitted that it is impossible for the appellant to maintain herself as well as her minor daughter in a paltry amount of rupees two lakhs. He further submits that the conduct of the respondent is such that he has not even bothered to pay this amount as well.

We have heard Mr. Sinha, learned counsel appearing on behalf of the appellant, on the modified relief, so prayed before this Court, limited to the quantum of permanent alimony granted by the Court below. The absence of the counsel for the respondent is reflective of his intent to evade even the obligation cast upon him under the decree of the Family Court insofar as the payment of permanent alimony is concerned. We are persuaded with the arguments of Mr. Sinha, on the issue of permanent



alimony because it was an *ex-parte* quantification of the amount. We are also conscious of the provisions underlying section 25(2) of the Hindu Marriage Act, which *inter alia* enables the aggrieved party to move the Family Court for modification in the order of permanent alimony and maintenance by demonstrating the change in circumstance.

We do note that the learned Family Court below while determining the quantum of permanent alimony has restricted it on the life support of the opposite party completely failing to notice that there was a daughter born from the wedlock and who had also to be maintained in the said amount.

Mr. Sinha informs that the daughter is aged about ten years and the responsibility lies on the appellant for maintenance and upkeep of not only herself but also her daughter until she is settled in life.

Having heard learned counsel appearing on behalf of the appellant, we are persuaded by the submissions, so made, which *prima facie* do indicate that the quantum of permanent alimony requires a variation in the circumstance that it has not only to provide a support for the appellant but for the minor daughter as well. A period of almost four years is going to lapse since the passing of the decree by itself is a sufficient change in



circumstance coupled with the fact that the Family Court below has failed to take notice of the fact that there is a minor daughter living with appellant born from the wedlock who needed support and thus, there was equal responsibility on the respondent-husband to ensure for her well being as well.

Since the appellant does not press the decree insofar as it dissolves the marriage between the parties, rather has restricted her relief to the quantum of permanent alimony amount, we permit the appellant to move the Family Court below under Section 25(2) of the Hindu Marriage Act, 1955 for enhancement of the alimony amount, in the changed circumstance, together with supporting facts and figures and it goes without saying that any such application filed by the appellant would be considered by the Family Court below and disposed of expeditiously and preferably within six months of its filing.

It goes without saying that the appellant would also be within her rights to move for execution of the decree insofar as it allows permanent alimony of Rs. 2,00,000/- to the appellant.

With the observations and directions above, we dispose of this appeal.

Let the lower court records, so received from the



Court below, be returned forthwith in a sealed cover to the
Family Court, Gopalganj.

(Jyoti Saran, J)

(Arvind Srivastava, J)

mcv/sanjeev

AFR/NAFR	AFR
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