

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2411 of 2014

Dr. Manju Kumari W/O Manoj Kumar Chauhan, D/O Late Surendra Prasad Singh Resident of Village- Supaur Jamua, P.S.- Sangrampur, Distt.- Munger At Present Bypass Road, Mahisaudhi, P.S. and Dist.- Jamui

... .. Petitioner/s

Versus

1. Manoj Kumar Chauhan S/o Satyendra Kumar Singh Resident of Village- Sirsia, P.S.- Barhara Kothi, Distt.- Purnea
2. Rupesh Kumar Singh @ Pappu S/o Sri Krishnadeo Singh @ Kaltu Singh Resident of Village- Mahisaudhi, P.S. and District- Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Madan Prasad Singh No-2
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

7 15-11-2019 The present writ petition has been filed assailing the order dated 19.11.2013 passed by the learned Principal Judge, Family Court, Munger in New Case No. Misc. 491 of 2013, whereby and whereunder the petition filed by the petitioner herein for revival of T.S. (Mat) No. 168/2012 (New Case No. Mat-989 of 2013), which had stood dismissed as withdrawn vide order dated 29.10.2013, on the request of the petitioner after conciliation, has been dismissed as not maintainable.

The brief facts of the case are that a case bearing New Case No. Mat-989 of 2013/Old Case No. T.S. (Mat-168 of 2012), was filed by the respondent no. 1 namely Shri Manoj Kumar Chauhan for dissolving the marriage between the husband and the wife and passing of a decree of divorce in favour of the petitioner



of the said matrimonial case and against the respondent no. 1- petitioner herein on the ground of adultery. It appears that the learned court of Principal Judge, Family Court, Munger had mediated in between the petitioner and the sole respondent and thereafter the terms and conditions were drawn, however, it is the contention of the learned counsel for the petitioner herein that no written terms and conditions were signed by the petitioner and the learned Principal Judge, Family Court, Munger had dictated the said order dated 29.10.2013, dismissing the petition of the respondent no. 1 as withdrawn subject to the terms and conditions mentioned therein.

The learned counsel for the petitioner submits that the other terms and conditions are not being objected to by the petitioner herein except condition no. 4 whereby and whereunder it has been stipulated that the petitioner shall not marry one Rupesh Kumar Singh, after getting divorce from the respondent no. 1.

It is on this premise, that an absurd condition has been introduced by the learned Principal Judge, Family Court, Munger, a petition dated 07.11.2013 was filed by the petitioner herein to recall the order dated 29.10.2013 passed in the aforesaid matrimonial suit.

Despite valid service of notice, the respondent no.1 has



chosen not to appear and in fact this Court, by an earlier order dated 29.10.2018, has declared the notice issued upon the respondent no. 1 to have been validly served.

It appears that the respondent no. 1 is deliberately evading appearance before this Court inasmuch as the present case is a very old matter pertaining to the year 2014, hence this Court cannot be detained from passing appropriate orders.

The learned counsel for the petitioner has submitted that the impugned order dated 19.11.2013, passed by the Principal Judge, Family Court, Munger is not sustainable in the eyes of law in view of the provisions contained under Order XXIII Rule 3 of the Code of Civil Procedure, 1909 which is reproduced herein below:-

"Compromise of suit: 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, in writing and signed by the parties 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 so far as it relates to the parties to the suit, whether or not "the subject-matter of the agreement, compromise or satisfaction is the same as the subject matter of the suit."

I have heard the learned counsel for the petitioner and



I find that in case the compromise so arrived at is denied by the other party, the Court in seisin of the matter has to adjudicate upon the same. Hence, this Court is of the view that the petition dated 07.11.2013, filed by the petitioner herein was very much maintainable and the learned Principal Judge, Family Court, Munger ought to have adjudicated upon the disputes having arisen in between the parties, on account of the petitioner herein denying/challenging condition no. 4 of the terms and conditions stipulated in the order dated 29.10.2013, which is the basis for conciliation having taken place in between the parties and settlement of their matrimonial disputes.

Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, the writ petition is allowed and the order dated 19.11.2013, passed by the learned Principal Judge, Family Court, Munger is set aside and the matter is remanded to the learned court of Principal Judge, Family Court, Munger to adjudicate upon the petition dated 07.11.2013, filed by the petitioner herein on merits.

(Mohit Kumar Shah, J)

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