

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.252 of 2016

Ashok Kumar Kashyap

... .. Appellant/s

Versus

Meena Kumari

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Bhanu Pratap Singh

Mr. Bhashkar Shankar

For the Respondent/s : Mr. Shailesh Kumar Singh

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL ORDER

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

7 14-11-2019 Heard learned counsel appearing for the appellant as well as learned counsel appearing for the respondent and perused the record.

2. This Miscellaneous Appeal has been preferred against the judgment and decree dated 2.3.2016 passed by the learned Principal Judge Family Court, Aurangabad, Bihar in Matrimonial Case No. 109 of 2011 by which and whereunder learned Principal Judge Family Court, Aurangabad, Bihar dismissed the suit filed by the appellant under section 13 of Hindu Marriage Act 1955 for divorce with litigation cost of Rs. 6000/-.

3. The appellant filed Matrimonial Case no. 109 of



2011 under section 13 of Hindu Marriage Act 1955 against the respondent for grant of decree of divorce against respondent on the ground of cruelty and desertion. The appellant pleaded in his plaint that his marriage was solemnized with respondent on 20.05.2003 according to Hindu rites and rituals and after marriage, he started leading his conjugal life with respondent but after two months of solemnization of marriage respondent changed her behaviour and she started creating several problems in the family. He tried to persuade the respondent but she became more aggressive and started assaulting and misbehaving with his old mother and father. He further pleaded that the respondent left his house on 01.07.2010 and started residing at her parental home. However, he tried to take her back but she refused to return to her matrimonial home and she filed Deo P.S.Case No. 12 of 2010 for the offences punishable under section 498A of the Indian Penal Code against him as well as his other relatives. The appellant further pleaded in his plaint that he got anticipatory bail in the above stated Deo P.S.Case No. 12 of 2010 and during pendency of hearing of anticipatory bail, the court tried to patch up the dispute but respondent flatly refused to lead her conjugal life with the appellant and taking note of the aforesaid circumstance, the



learned court granted anticipatory bail to the appellant. The appellant further pleaded that on account of cruel behaviour of the respondent, it is not possible for the appellant to lead his conjugal life with the respondent. He further pleaded that in spite of the above stated developments, the appellant again went to the parental home of the respondent and tried to take the respondent back to her matrimonial home but the family members of respondent forcibly took the signature of appellant on several blank papers. The appellant on the basis of aforesaid pleadings sought a decree of divorce.

4. The respondent appeared before the trial court and filed her written statement, in which, she denied the pleadings of the plaintiff and on contrary, she pleaded that the behaviour of appellant and his family members was very cruel towards her due to non fulfillment of illegal demand of dowry and the family members of appellant were not satisfied with the gifts given by her father at the time of solemnization of marriage. She further pleaded in his written statement that when her marriage was solemnized with the appellant, the appellant was unemployed but after marriage, he was appointed as Lab Technician and after that he changed his behaviour and started pressurizing the respondent to fetch more dowry from her



parents and when her parents demanded her Bidai, the appellant as well as his family members refused to send her to parental home. She further claimed that at any how, on the persuasion of relatives and family members, she could go to her parental home but thereafter, the appellant never visited to her parental home to take her back and, thereafter she filed a case for the offence punishable under section 498A of the Indian Penal Code. She further pleaded that in spite of the above stated averments, she was ready to settle the dispute but the appellant did not take any step and refused to settle the dispute. She claimed that she was deserted by the appellant and on the basis of aforesaid pleadings she prayed for dismissal of divorce suit of the appellant.

5. The appellant filed rejoinder to the written statement and denied the above stated averments in the said written statement.

6. On the basis of pleadings of the parties, the learned court below formulated two questions for decisions that is (i) Whether opposite party has committed cruelty with the petitioner or not (ii) Whether opposite party has deserted the petitioner or not.

7. In course of trial, the appellant examined altogether



five witnesses whereas the respondent got examined herself in support of the plea.

8. Learned court below after examine the materials available on the record, came to the conclusion that the appellant could not succeed to prove that the respondent had caused cruelty to him and the appellant also failed to prove that it was respondent, who deserted him and on the basis of aforesaid conclusion, the learned trial court dismissed the suit of the appellant.

9. Learned counsel appearing for the appellant submits that the learned trial court failed to appreciate the evidences available on the record in right perspective. He further submits that almost all the witnesses examined on behalf of the appellant very clearly stated that the behaviour of the respondent was very cruel and she left her matrimonial home without any rhyme and reason. He further submits that there was sufficient material before the trial court to come to the conclusion that behaviour of respondent was not up to the mark and she deserted the appellant but the learned trial court did not take note of the aforesaid fact and passed the impugned judgment.

10. He, next, submits that it is an admitted case of the



parties, that prior to institution of Matrimonial Case no. 109 of 2011, the respondent lodged criminal case with wide allegations, not only against the appellant, but also against his parents and other relatives. and the aforesaid fact itself is sufficient to prove the cruel behaviour of the respondent.

11. He further submits that it is also an admitted position that in course of hearing of anticipatory bail petition of the appellant, the attempt was taken by the court to settle the dispute of the parties but it was respondent, who refused to live her conjugal life with the appellant and so far as the appellant is concerned, he was ready to settle the dispute with the respondent. He further submits that during pendency of this appeal, this court also took pain to resolve the dispute of the parties and in that course, the appellant was ready to settle the dispute by way of one time settlement but the respondent is not ready for that. He further submits that in the aforesaid circumstance, the impugned judgment cannot be sustained in the eye of law.

12. On the other hand, learned counsel appearing for the respondent refuted the above stated submissions, arguing that except the oral statements of plaintiff witnesses, there was nothing on the record to show that the appellant was put into



cruelty by the respondent. He further submits that the evidences available on the record, very clearly, established this fact that respondent was driven out from her matrimonial home by the appellant and his other family members. He further submitted that the learned trial court after evaluating the materials available on the record passed the impugned judgment and there is nothing in the impugned judgment on the basis of which it can be said that the learned trial court has committed error in passing the impugned judgment.

13. Having heard the contentions of both the parties, we went through the impugned and lower court record.

14. The appellant brought Matrimonial Divorce Case no. 109 of 2011 on the ground of cruelty and desertion and it is specific pleading of the appellant that the behaviour of the respondent was very cruel towards him as well as his other family members and furthermore, it is specific pleading of the appellant that the respondent left her matrimonial home without any rhyme and reason and, accordingly, she deserted him. It is not in dispute that it was upon the appellant to prove the fact of cruelty and desertion and there was no need for the respondent to prove the above stated fact. The appellant got examined himself as well as other witnesses. No doubt, the aforesaid



witnesses stated that the behaviour of the respondent was not up to the mark but no specific incident has been stated by the witnesses including the appellant regarding the ill behaviour of the respondent and the statement of plaintiff witnesses goes to show that there was only routine wear and tear between the respondent and the appellant. It is well settled principle of law that only routine wear and tear between husband and wife cannot be treated as cruelty. So far as the plea of desertion is concerned, the respondent got examined herself and she stated that she was compelled to live her in matrimonial home and the appellant never took pain to take her back.

15. No doubt, the respondent filed criminal case against the appellant as well as his other relatives including parents but mere filing of criminal case by respondent against her husband and family members is not amount to cruelty because every person has a right to take recourse of the law for redressal of his grievance.

16. The perusal of the impugned judgment goes to show that the learned trial court has discussed all the aspects of the matter and, therefore, in the aforesaid circumstance, we do not find any ground to interfere into the impugned judgment . Accordingly, this Miscellaneous Appeal stands dismissed and



the impugned judgment is, hereby, confirmed.

(Hemant Kumar Srivastava, J)

(Partha Sarthy, J)

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