

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.29 of 2016

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Pankaj Kumar, S/o Sukdeo Singh, R/o Village – Sahadullepur, P.O.- Jagdishpur, P. S.- Sahebganj, District – Muzaffarpur.

... .. Appellant

Versus

Kumari Rinku, W/o Pankaj Kumar, D/o Sri Vinod Singh, R/o – Village – Sahadullepur, P.O.- Jagdishpur, P.S.- Sahebganj.

At present – Village+P.O.- Amaitha, P.S.- Saraiya, Distt. - Muzaffarpur.

... .. Opposite Party

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Appearance :

For the Appellant : Mr. Manoj Kumar Manoj, Adv.

For the Opposite Party : Mr. Praveen Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 10-12-2019

Heard learned counsel appearing for the appellant as well as learned counsel appearing for respondent and perused the record.

2. This miscellaneous appeal, under Section 19(1) of the Family Court's Act, 1984, has been filed against the impugned order, dated 20.08.2015, passed by Principal Judge, Family Court, Muzaffarpur in Matrimonial (Divorce) Case No. 212 of 2014, by which and whereunder, learned Principal Judge, Family Court, Muzaffarpur dismissed the aforesaid Matrimonial (Divorce) Case No. 212 of 2014 filed on behalf of the appellant.



3. The appellant (hereinafter referred to as 'Applicant') filed above stated Matrimonial (Divorce) Case No. 212 of 2014 against respondent (hereinafter referred to as 'Opposite Party') under Section 13 of the Hindu Marriage Act on the ground of desertion, cruelty and adultery, pleading therein that his marriage was solemnized with opposite party on 17.06.2012 at village Amaitha, P.S.- Saraiya, District – Muzaffarpur and after solemnization of marriage, they started leading their married life as husband and wife. He, further, pleaded that after one month of the marriage, he went to Jalandhar in connection with his livelihood whereas opposite party remained at village with his parents. He, further, pleaded that near about after one year, he got information through his father that the opposite party developed intimacy with one Ganaur Pandit his co-villager and after getting the aforesaid information, the applicant returned to his home and advised the opposite party not to meet with Ganaur Pandit but opposite party straight way refused to follow the aforesaid advice of the applicant. He, further, pleaded that the opposite party started misbehaving with him and hurling filthy language to him saying that he has no capacity to sexually satisfy her. Furthermore, he pleaded that the aforesaid Ganaur Pandit as well as opposite party several times abused him and on 07.06.2014, he found opposite



party and aforesaid Ganaur Pandit in a room and when the room was opened in presence of co-villagers, he found the opposite party with Ganaur Pandit in compromising position.

4. On the basis of aforesaid pleadings, the applicant filed the above stated divorce suit on 17.06.2014. After admission of the aforesaid divorce suit, the notice was issued to opposite party, who appeared before the learned Principal Judge, Family Court and filed her written statement. The learned Principal Judge took efforts to reconcile the dispute of the parties but failed in his attempt and thereafter, dismissed the aforesaid divorce suit without giving any opportunity of adducing the evidences and hearing to the parties.

5. Learned counsel appearing for the applicant assailed the impugned order arguing that no opportunity to adduce the evidences was given to the applicant by the learned Principal Judge and, therefore, the impugned order cannot be sustained in the eye of law.

6. On the other hand, learned counsel appearing on behalf of the opposite party submits that the opposite party is still ready to lead her conjugal life with the applicant and, therefore, in the aforesaid circumstances, this matter should be referred to the mediation center so that both the parties could settle their dispute.



7. Having heard both the parties, we went through the lower court record.

8. From perusal of lower court record, we find that the learned Principal Judge has adopted a new procedure for disposal of aforesaid Matrimonial (Divorce) Case No. 212 of 2014 and the procedure adopted by learned Principal Judge is foreign to the procedure established by law. It is obvious from perusal of the lower court record that the learned Principal Judge took efforts to settle the dispute of the parties and when he failed in his attempt, he, hurriedly, dismissed the Matrimonial (Divorce) Case No. 212 of 2014 without giving any opportunity to the parties to adduce their respective evidences. Therefore, in our view, the impugned order cannot sustain in the eye of law.

9. On the basis of aforesaid discussions, this appeal is allowed and the impugned order, dated 20.08.2015, passed by learned Principal Judge, Family Court, Muzaffarpur in Matrimonial (Divorce) Case No. 212 of 2014 is set aside and the Matrimonial (Divorce) Case No. 212 of 2014 is remitted to the court of Principal Judge, Family Court, Muzaffarpur to pass a fresh judgment after giving sufficient and proper opportunities to the parties to adduce their respective evidences and furthermore, give opportunity to the applicant to implead the above stated



Ganaur Pandit as opposite party to the aforesaid Matrimonial (Divorce) Case No. 212 of 2014.

10. Further, the learned Principal Judge, Family Court, is directed to dispose of Matrimonial (Divorce) Case No. 212 of 2014 within six months from the date of receipt/production a copy of this judgment and furthermore, both parties are directed to appear before learned Principal Judge, Family Court, Muzaffarpur in connection with Matrimonial (Divorce) Case No. 212 of 2014 on 20.01.2020.

11. In the aforesaid manner, this appeal stands disposed of.

12. The office is directed to return the original record of Matrimonial (Divorce) Case No. 212 of 2014 to the court of learned Principal Judge, Family Court, Muzaffarpur without any delay.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

Rajeev Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.12.2019
Transmission Date	17.12.2019

