

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1392 of 2016

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Abhishek Ranjan Son of Shri Sudama Singh Resident of Village- Dhangawan,
Police Station- Jehanabad, District- Jehanabad

... .. Appellant

Versus

1. Anjali Verma Daughter of Sunil Kumar, Wife of Abhishek Ranjan Resident of Village- Bajitpur, Post Office- Bajitpur, Police station- Karpi, District Arwal, at Present Niyojit Shikshika Buniyadi Vidyalaya Piyari Ataulah, Anchal Karpi, District- Arwal, Moblie No. 9708273693, 9576234491, 7277262522
2. Pintu Kumar Son of late Chhote Narayan Singh Resident of Village- Dhangawan, Police Station- Jehanabad, District- Jehanabad.

... .. Respondents

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Appearance :

For the Appellant : Mr.Vijay Kumar, Advocate
For the Respondent no.1 : Asha Kumari, Advocate

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 25-09-2020

Heard learned counsel for the appellant and learned
counsel for the respondent no.1.



I.A. No. 10016 of 2016 was filed for condonation of delay of 271 days in filing the present appeal.

Notices were issued to both the respondents under ordinary process as well as registered cover in the limitation matter vide order dated 4.10.2018. Respondent no. 1 appeared through her counsel whereas notices on respondent no. 2 was served through his mother. Considering the nature of issue involved in the present Miscellaneous Appeal, the notice issued to the respondent no. 2 was treated as validly served vide order dated 1.2.2019 and by order dated 8.2.2019, the delay of 271 days in filing the appeal was condoned.

The sole appellant Abhishek Ranjan being the husband of the respondent no. 1 Anjali Verma, has assailed the order dated 23.2.2016 passed by the learned Principal Judge, Family Court, Jehanabad whereby the Matrimonial Case No. 151 of 2014, filed by the appellant for dissolution of marriage with respondent no. 1 on the ground of cruelty and adultery, has been dismissed due to non appearance of the appellant during conciliatory settlement proceeding undertaken by the learned Court under Section 23 of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act) and under Section 19 of the Family Courts Act, 1984 (hereinafter referred to as the Family Courts Act).



In order to appreciate the issue involved in the present Miscellaneous Appeal, the question whether a matrimonial case can be dismissed due to non-appearance of the husband during conciliatory proceeding, it is relevant to analyze the factual aspect of the matter.

The appellant is the husband of respondent no. 1 and respondent no. 2 is the person with whom the respondent no. 1, as claimed by the appellant, has the adulterous relationship.

The admitted fact of the case is that the appellant was married with respondent no. 1 on 24.12.2008 but subsequently, compatibility issue developed between them, as a result, Matrimonial Case No. 151 of 2014 was filed by the appellant before the learned Principal Judge, Family Court, Jehanabad on 21.10.2014 seeking decree of divorce on dissolution of marriage between the appellant and respondent no. 1 on the ground of cruelty and adultery.

The Matrimonial Case no. 151 of 2014 was registered on 21.10.2014. The learned Principal Judge, Family Court, Jehanabad ordered for listing the same on 22.10.2014 when the summons were issued to the respondents and the matter was fixed for 10.12.2014. Thereafter, the matrimonial case was adjourned on several occasions awaiting service report of the notices issued to



the respondents. On 23.11.2015 both the respondents appeared in the matrimonial case and the respondents filed their written statement. An attempt for compromise was initiated and the matter was adjourned to 16.12.2015 for fixation of issue and settlement. Since the Presiding Officer of the Court was on leave, the case was adjourned for 18.12.2015. On 18.12.2015, the appellant appeared but on the prayer made on behalf of the respondents, the matter was again adjourned to 19.1.2016. On 19.1.2016, the appellant failed to appear. Consequently, non-bailable warrant was directed to be issued. On 4.2.2016, in presence of the parties, the matter was adjourned for 23.2.2016 for settlement but on that day, the appellant failed to appear, hence the Matrimonial Case was dismissed vide order dated 23.2.2016 passed by the learned Principal Judge, Family Court, Jehanabad. The same is under challenge in the present proceeding.

The appellant also filed Complaint Case No. 895 of 2014 against both the respondents alleging offence under Sections 494 and 379 of the IPC on 18.11.2014. Consequently, the learned Magistrate, vide order dated 18.11.2014 found a prima facie case for offences punishable under Sections 494 and 379 of the IPC and issued processes against the respondents. Respondent no. 1 Anjali Verma also filed Complaint Case No. 909 of 2014 levelling



accusation under Section 498A of the IPC. Admittedly, the complaint filed by the respondent no. 1 was subsequent to the Matrimonial case as well as complaint filed by the appellant.

It is submitted by learned counsel for the appellant that the appellant is an army personnel. The appellant admits his marriage with respondent no. 1, but respondent no. 1 developed adulterous relationship with respondent no.2 Pintu Kumar. The appellant claims to be present in Court on 23.11.2015 when written statement was filed on behalf of the respondent no. 1 and the matter was adjourned to 16.12.2015 for framing the issue and settlement but unfortunately, on 16.12.2015 the Presiding Officer was on casual leave. Thereafter the matter was fixed for 23.2.2016, but due to lapse of leave, the appellant being army personnel, could not appear in person. The learned Court below instead of recording that the efforts to resolve the issue failed, dismissed the entire matrimonial case. The learned Court below ought to have decided the suit on merit. Learned counsel for the appellant further submits that the appellant appeared for conciliation but subsequently he could not appear and in the civil proceeding, mechanically a non-bailable warrant was issued vide order dated 23.2.2016 the entire suit has been dismissed.



Learned counsel for the respondent no. 1, however, submits that though the appellant entered appearance and appeared for reconciliation but thereafter deliberately failed to appear instead of issuance of non-bailable warrant. Hence, the Court had no option but to dismiss the suit. The appellant has performed marriage with a lady, namely, Priya.

Having heard learned counsels for the parties, it appears that in spite of valid service of notice none appeared on behalf of respondent no. 2. The marriage between the appellant and respondent no. 1 is admitted. From the materials on record, it appears that after filing of the suit, the learned Principal Judge, Family Court rightly took an effort to persuade the parties to arrive at a settlement.

Section 9 of the Family Courts Act, 1984 casts the duty upon the Family Court to persuade the parties to arrive at a settlement in respect of the matrimonial dispute. Section 9 of the Family Courts Act reads as follows:-

“In every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court,



follow such procedure as it may deem fit. -(1) In every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit."

(2) If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such period as it think fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by sub-section (2) shall be in addition to, and not in derogation of any other power of the Family Court to adjourn the proceedings."

From the above provision, it is crystal clear that in every suit or proceeding, the Family Court has to take effort at the first instance where it is possible to do so consistent with the nature and circumstances of the case, and to assist and persuade the parties in arriving at a settlement with respect to the matrimonial dispute.

Section 23(2) of the Hindu Marriage Act, 1955 also casts a duty upon the Court to bring about reconciliation. Section 23(2) of the Hindu Marriage Act, 1955 reads as follows:-

"Before proceeding to grant any relief under this Act, it shall be the duty of the Court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances



of the case, to make every endeavour to bring about a reconciliation between the parties:

Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause(v), clause(vi) or clause (vii) of sub-section (1) of Section 13.”

Section 23 (3) of the Hindu Marriage Act, 1955, however, mandates that the matter can be adjourned for a reasonable period not exceeding fifteen days for conciliating the issue and any person can be nominated by the court if the parties fail to name any person.

Section 10 of the Family Courts Act, 1984 mandates that subject to the other provisions of this Act and the Rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) (hereinafter referred to as ‘the C.P.C.’) and any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.

Order III, Rule 1 of the C.P.C. mandates that the parties may appear in any proceeding under the Code before any Court in



person, or by their recognized agent, or by a pleader on their behalf. It further provides that any such appearance shall, if the Court so directs, be made by the party in person.

Similarly, Order IX of the C.P.C. deals with the appearance of the parties and consequence of non-appearance without sufficient cause shown by the party who is directed to appear in person. It will be dealt with the provisions as incorporated under Order IX. Order IX Rule 8 prescribes the procedure when only defendant appears. Order IX Rule 8 reads as follows:

“R.8. Procedure where defendant only appears.- Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted shall dismiss the suit so far as it relates to the remainder.”

From bare reading of the above quoted provision, it is apparent that it applies where the defendant appears and plaintiff does not appear when the suit is called for hearing, then the Court shall make order for dismissal of the suit unless the defendant admits the claim or part thereof. The Court can pass decree against



the defendant to the extent of admission and dismiss the remaining part of the suit.

In the present case, Order IX Rule 8 of the CPC will not apply because the suit was not called for hearing. Though in the suit itself, the compromise/settlement proceeding which was incidental to the same, was going on. If the compromise failed then the Court ought to have framed the issue and proceeded on the merits of the case.

The impugned order does not suggest the mode of process which has been served upon the appellant. The impugned order also does not suggest that the learned Court below considered this fact that the appellant is a military personnel.

So far as necessity to make an effort by the Court to reconcile the issue is concerned, Section 9 of the Family Courts Act as well as Section 23(2) of the Hindu Marriage Act, 1955 cast a duty upon the Court for conciliatory settlement between the parties. The aforesaid provision has been recognized by the High Court, Mysore in the case of Jivubai Vs. Ningappa, reported in AIR 1963 Mys 3. Similarly, a bench of this Court in the case of Chhote Lal Vs. Kamla Devi and others, reported in AIR 1967 Patna 269, held that sub-section (2) of Section 23 of the Hindu Marriage Act, 1955 enjoins upon the Court a duty to make a



sincere effort at reconciliation before proceeding to deal with the case in the usual course.

From bare perusal of the order sheet of learned Court below, before entering into the merit of the suit, it appears that, the Court made an effort to arrive at a settlement, the appellant appeared but subsequently he failed to appear and consequently, the suit has been dismissed in its entirety. The above quoted provision mandates for making an effort for conciliation at the very initial stage but that does not mean that the entire proceeding stands vitiated if the effort of reconciliation has not been made at the initial stage by the Court or it fails to settle the issue. In this regard, reference is made to a decision of this Court in case of **Sushma Kumari Vs. Om Prakash**, reported in **AIR 1993 Patna 156**, wherein it has been held that the duty is cast on the Court to take steps for reconciliation between the parties, though non-observance of endeavour for reconciliation would not make the order of the Court without jurisdiction.

The need for getting the issue resolved, even in the case where the reconciliation fails, through mediation, has been recognized by the Supreme Court in case of **K. Srinivas Rao Vs. D.A. Deepa**, reported in **(2013) 5 SCC 226**, wherein it has been held mandatory to the Family Court to make all efforts to settle the



matrimonial dispute through mediation. Even if the counsellors submit a failure report, the Family Courts shall, with the consent of the parties, refer the matter to the mediation centre. Paragraph 46.1 of the judgment reads as follows:

“46.1. In terms of Section 9 of the Family Courts Act, the Family Courts shall make all efforts to settle the matrimonial disputes through mediation. Even if the counsellors submit a failure report, the Family Courts shall, with the consent of the parties, refer the matter to the mediation centre. In such a case, however, the Family Courts shall set a reasonable time-limit for mediation centres to complete the process of mediation because otherwise the resolution of the disputes by the Family Court may get delayed. In a given case, if there is good chance of settlement, the Family Court in its discretion, can always extend the time-limit.”

In view of the discussions made above, this Court is of the view that even if the appellant failed to appear in the reconciliation proceeding which is an ancillary proceeding to the main suit, the learned Family Court ought to have proceeded on merits and decided the matrimonial case. Since the pleadings were complete, the respondent's written statement was already on record and the next step was the framing of issue. In that situation, the learned Family Court might have directed for the appearance



of the appellant at the subsequent stage giving him an opportunity for reconciliation. The Family Courts Act, 1984 as well as the Hindu Marriage Act, 1955 are social legislation and the Court has to bear in mind the obligation given to the Court as well as the intention for which the legislature enacted these laws.

Hence, in the interest of justice, this Court is of the view that the impugned order be set aside. Accordingly, order dated 23.2.2016, passed by the learned Principal Judge, Family Court, Jehanabad, whereby Matrimonial Case No. 151 of 2014 has been dismissed for non-appearance of the appellant at the reconciliatory stage, is set aside. The matter is remitted back to the learned Family Court, Jehanabad to decide the matrimonial case on merits in accordance with law.

Remitting the matter to the learned Family Court, Jehanabad does not preclude the learned Family Court from taking efforts for reconciliation, as mandated under Section 9 of the Family Courts Act, 1984. The above order is also being passed in view of the fact that both sides have agreed to appear before the learned Family Court, Jehanabad within four weeks of the resumption of physical Court proceeding, which is non-functional due to present pandemic Covid-19.



We make it clear that we have not made any observation
on the merits of the claim of the either party.

This Miscellaneous appeal stands disposed of.

(Dinesh Kumar Singh, J)

(Prabhat Kumar Singh, J)

Shashi/Anil/

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

