

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.493 of 2015

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Avinash Singh, aged 55 Years, S/o Late Tej Bhadur Bhaiya, resident of Sital Sadan, Flat no.37 B, 33 Tollygunj, Circular Road, P.S. Behala, Kolkata, West Bengal. At Present residing at 164/41, Prince Anwar Shah Road, P.S. Lake Thana, Kolkata- 700045. Appellant/s

Versus

Smt. Sunita Singh W/o Avinash Singh, D/o Shri Awtar Singh, Resident of 'O'-13 Ashiana Nagar, Raja Bazar, P.S. Shastri Nagar, Town and District, Patna-800025. Respondent/s

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Appearance :

For the Appellant/s : Mr. Subroteswar De, Adv.
For the Respondent/s : Mr. Chandra Kant, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA)

Date : 14.08.2019

Heard learned counsel appearing for the
appellant and the respondent.

2. This appeal is directed against the judgment
and decree dated 6th October, 2015, passed by Additional
Principal Judge, Family Court, Patna in Matrimonial Case No.
13 of 1999, whereby and whereunder the suit filed by the
appellant-husband against the respondent-wife for
dissolution of marriage has been dismissed. The appellant-



husband was further directed to take the respondent-wife alongwith sons from her parental house to his home so that they may resume their matrimonial life. It was further directed that in case appellant-husband neglects and refuses to maintain his wife, she would be entitled to get Rs. 8,000/- per month by way of maintenance from October, 2015 payable by 15th day of every succeeding month. The appellant was further directed to pay arrears of *pendente lite* maintenance up to September, 2015 as per direction given in the order dated 21.11.1999.

3. The case of the appellant-husband, in short, is that the marriage between the parties was solemnized on 18.12.1984 as per Hindu Rites and Customs. From the wedlock two sons were born on 14.12.1986 and 18.07.1992. However, soon after marriage, according to the appellant, the respondent-wife started behaving in rude manner with the family members of the appellant. In the year 1986, she is alleged to have even assaulted the mother of the appellant, which created tremendous impact on the mental condition of the appellant. After this incidence, her brother came and took her to Dhanbad where she stayed for three months but after she came back, she again started her cruel behaviour



towards all. On complaint made to her parents, her father took her to Hajipur i.e. the place of his posting, where she stayed for six months. It is stated that she came back after 6 months but there was no change in her behaviour. In June, 1989 her younger brother took her to Assam where she stayed for three months and when she came back the appellant got the son admitted in school. Since the father of the appellant died on 18.03.1993 due to shock and cruel behaviour of the respondent-wife, the mother of the appellant went to Mumbai to her sister's place for a change, but when she returned back after three months, the respondent-wife again started torturing her on small issues in the family. The appellant learnt that the respondent was highly influenced by her father's instigation to get the properties of her mother-in-law transferred in her name and for which she also used to provoke the appellant. It is stated that finally the respondent left the matrimonial home on 03.11.1994, on the auspicious day of Diwali, without the knowledge or consent of the appellant and without informing anybody. She also took with her the two children and since then she never returned back to her matrimonial house.



4. The case of the respondent, in short, is that she was a consistent victim of insult, abuses, assault, torture both mental and physical by husband and her mother-in-law. She has also alleged about demand of dowry. She stated on affidavit that her husband developed illegal relationship with another lady and this divorce is meant to marry that lady. She has already made complaint to Kolkata police on four occasions for giving threat to her and for assaulting her at Sasural. Her father also made complaint to Police on three occasions against the husband and mother-in-law. She also claimed that her husband is related with a Don of Kolkata and even tried to kill her on 11.09.1994, which was reported to Kolkata Police.

5. In order to substantiate the allegations, the appellant-husband has examined himself and his mother as witnesses in this case, whereas in defence the respondent-wife has examined herself, her father and one Chandra Bhushan Singh.

No documentary evidence has been brought on record on behalf of the appellant-husband.

On behalf of the respondent-wife, only a copy of the Website Print relating to Genesis Fintec Limited has been



brought on record as documentary evidence, which has been marked 'A'.

6. During the course of the proceedings before the Family Court below a petition was filed by the appellant under Order 23 Rule 1(1) of the C.P.C. which has been marked 'X' by the Court for identification. However this petition was rejected as abandoned and restored thereafter but not pressed by the appellant until disposal.

7. The petition filed by the appellant-husband for dissolution of marriage confirms that the prayer was based on two grounds i.e. cruelty and desertion by the respondent-wife.

The respondent-wife by filing her written statement has clearly denied the aforesaid two allegations as based on no evidence.

8. The Family Court was of the view that since the wife has clearly denied the aforesaid allegations, it was for the appellant-husband to substantiate the aforesaid allegations by evidence.

9. The pleadings and evidence on record confirms that the appellant has examined only himself and his mother as witnesses. No independent witness such as



neighbour or house servant was examined in the case to drive home the allegation of cruelty and desertion although, there is evidence that there was a servant present in the house who had seen the entire incidence.

10. From the perusal of the order-sheet of the Family Court below, it is evident that on 06.08.1999 and 25.11.2010, the Court had made attempts for reconciliation but the same failed because even after expressing the readiness to go to her matrimonial home by the respondent-wife, the appellant-husband refused to take her back to his home on both the occasions.

The pleadings on record also confirms that the appellant-husband never filed any petition under section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights.

11. Insofar as filing of petition under Order 23 Rule 1(1) of the Code of Civil Procedure on 20.07.2003 is concerned, the Family court has recorded that from perusal of the case record it is evident that after filing the aforesaid petition the petitioner did not take any interest in the case for a long period, and ultimately, the suit was dismissed for default on 05.10.2009, however, on a petition being filed by



the petitioner for restoration, the same was restored by order dated 13.01.2010. The Family Court was of the considered opinion that appellant cannot claim divorce after abandoning the case for seven years.

12.The Family Court, after examining the contest on the evidence available, was of the view that the appellant had failed to prove the allegations and accordingly, dismissed the case.

13. Before this Court, the matter was posted for judgment on 22.02.2019 on conclusion of arguments on 08.02.2019 but since there appeared a glimmer of hope of reconciliation that this Court after adjourning the matter for some dates by way of extra ordinary indulgence referred it to the Mediator, Patna High Court for exploring a possible solution vide order passed on 25.03.2019.The Mediator after making his efforts reported a failed attempt and thus the judgment was reserved on 26.06.2019.

14. Learned counsel for the appellant, in support of his submissions to contest the judgment/decreed of the Family Court, has placed reliance on the judgment in the case of ***Geeta Jagdish Mangtani Vs. Jagdish Mangtani***, reported in **(2005)8 S.C.C. 177**. On the other hand, learned



counsel for the respondents has placed reliance on the judgments in the case of ***Bipinchandra Jaisinghbai Shah Vs. Prabhavati***, reported in ***A.I.R. 1957 (SC) 176***, ***Manglabai Vs. Deorao Gulabrao***, reported in ***A.I.R. 1962 (M.P.) 193***, ***Jyoti Sarup Manocha Vs. Smt. Lalita Manocha***, reported in ***A.I.R. 1985 (Delhi) 491***, and in case of ***Neelam Kumari Singh Vs. Shree Prashant Kumar***, reported in ***2010(3) P.L.J.R. 632*** to submit that simply because the respondent left the house, is no evidence for confirming desertion rather the appellant should have made attempt to bring her back and it is only on such refusal that a plea of desertion can be upheld.

15. We have heard learned counsel for the parties and we also perused the evidence available on record. In fact it is bearing note of the complete absence of evidence to support the charge of cruelty and desertion that an attempt was made for reconciliation which has failed.

16. In the facts and circumstances of the present case and in view of the specific finding of the Family Court on the contest, I am of the view that the appellant has failed to make out a case for interference with the judgment of the Court below. In fact I am in full agreement with the findings



arrived at by the Family Court. The appellant has failed to show any infirmity in the findings of the Family Court, and therefore, the judgment under challenge does not warrant any interference by this Court.

The appeal is, accordingly, dismissed. No costs.

Let the lower court records be returned to the Family Court below forthwith and within a fortnight in sealed cover.

(Arvind Srivastava, J)

Jyoti Saran, J : I agree.

(Jyoti Saran, J)

mcv/-

AFR/NAFR	AFR
CAV DATE	26.06.2019
Uploading Date	17.08.2019
Transmission Date	NA

