

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.684 of 2017

Sangeeta Kumari, wife of Praduman Kumar Pathak, daughter of Nand Kumar Mishra, presently residing at Village + Post Office Agnoor, P.S.Kaler, District -Arwal.

... .. Appellant/s

Versus

Praduman Kumar Pathak, son of Suresh Pathak, resident of Village- Arai, Post Office-Arai, P.S. Daudnagar, District- Aurangabad.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rakesh Kumar Samarendra, Adv.

Mr. Manager Sah, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 25-09-2020

I.,A. No. 5558 of 2017

The aforementioned Interlocutory Application has



been filed for condonation of delay of 1 year 11 months 5 days in filing the present appeal.

Notices under ordinary process as well as registered cover with A/d were issued vide order dated 3.8.2018 to the sole respondent in the limitation matter. The delay in filing the present appeal was condoned vide order dated 7.12.2018.

Heard Mr. Rakesh Kumar Samrendra, learned counsel for the appellant and learned counsel for the respondent.

Affidavits have been filed on behalf of the appellant and the respondent. Let it be taken on record.

The present Miscellaneous Appeal has been filed on behalf of the appellant, Sangeeta Kumari, against the judgment and decree dated 04.08.2015 respectively, passed in Matrimonial Case No. 5559 of 2014 by the learned Principal Judge, Family Court, Patna, whereby, the marriage between the appellant and the respondent has been dissolved by *ex parte* decree of divorce on the ground of cruelty.

Learned counsel for the appellant submits that since the present appeal was filed challenging the judgment and decree dated 4.8.2015 on merit and not only on the ground of *ex-parte* decree, hence, the appellant chose not to avail the remedy under Order IX Rule 13 C.P.C. Though the appellant has challenged the judgment and decree but now the appellant and the respondent are residing together, the learned counsel for the respondent submits



that the respondent has no objection if the impugned judgment and decree under appeal is set aside. Statement to that effect has been made by the respondent in paragraph-9 of the affidavit dated 29.07.2019 which reads as follows;

“That the Deponent/Respondent desires that the ex-parte decree of divorce dated 28.07.2015 passed in the Matrimonial (Divorce) Case No. 5559 of 2014, by the learned Principal Judge, Family Court, Patna be set aside”

Learned counsel for the appellant submits that the appellant and respondent are residing together and hence the judgment and decree passed by the learned Court below dissolving the marriage between them be set aside. It is further submitted that the certified copy of the order dated 19.12.2018 passed by the learned A.C.J.M.-IV, Arwal in Complaint Case No. 94 of 2015, has been filed by the appellant whereby cognizance has been taken under Section 498A of the Indian Penal Code. In the said complaint case, it appears that the respondent filed an affidavit to the effect that both are ready to resume the conjugal life and accordingly, the Court permitted the respondent-appellant to take the complainant to the matrimonial house. The order dated 19.12.2018 passed by the learned A.C.J.M.-IV, Arwal, in Complaint Case No. 94 of 2015 reads as follows;

“Both the parties are in attendance. A petition by accused Paduman Pathak and an affidavit the complainant Sangeeta Devi duly R.T.I. impressed by him, filed and pressed. Heard. Accused



Praduman Pathak is ready to live with the complainant maintaining her self respect. Complainant is also ready to live with the accused peacefully. Hence, accused Praduman Pathak is permitted to take the complainant his home which he confirms in the margin of the order sheet.

Put up on 18.01.2019 for further proceeding if any.”

It is further jointly submitted that in pursuance to the order dated 19.12.2018 passed by the learned ACJM, Arwal in the complaint case, both the appellant and the respondent are residing together. The appellant and the respondent are present in Court and hence, in order to allow them to lead a legally valid conjugal life, the judgment and decree under appeal be set aside. An affidavit to that effect has been filed on behalf of the appellant and respondent on 29.07.2019 which is on record. The appellant is further ready to file appropriate petition before the learned Court below for withdrawal/disposal of the complaint case.

Considering the rival submissions of the parties, since the marriage between the appellant and the respondent and birth of two children are admitted, keeping in view the fact that the respondent has agreed for setting aside the judgment under appeal, the impugned judgment and decree dated 04.08.2015 passed in Matrimonial Case No. 5559 of 2014 by the learned Principal Judge, Family Court, Patna is set aside with the consent of the parties.

Accordingly, the present Miscellaneous Appeal is allowed. Let the decree be prepared accordingly.



It is expected from the learned A.C.J.M.-IV, Arwal to dispose of/ conclude the proceeding of Complaint Case No. 94 of 2015 in accordance with law.

(Dinesh Kumar Singh, J)

(Arvind Srivastava, J)

brajesh/-Anil/

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

