

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.661 of 2017

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Ahana Gupta @ Ahana Choudhary D/o Sri Ambika Prasad, W/o Girish Kant Choudhary @ Sunny, Resident of Mohalla- Narkatiyaganj, P.S.- Shikarpur, District-West Champaran

... Appellant

Versus

Girish Kant Choudhary @ Sunny S/o Naresh Choudhary, Resident of Mohalla- Sotalya Shyam Mandir Road, Pankaj Market, Muzaffarpur, District- Muzaffarpur

... Respondent

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Appearance :

For the Appellant	:	Mrs. Rashmi Jha, Advocate and Mr. Umesh Chandra Verma, Advocate
For the Respondent	:	Mr. Sarva Deo Singh, 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 : 07-08-2019

I.A. No.6777 of 2017

Interlocutory Application has been filed with a prayer for early hearing of this appeal.

M.A. No. 661 of 2017

Heard Mrs. Rashmi Jha, learned counsel for the appellant and Mr. Sarva Deo Singh, learned counsel appearing for the respondent.

The present Miscellaneous Appeal has been filed for setting aside the judgment dated 14.06.2017 passed by the learned Principal Judge, Family Court, West Champaran, Bettiah in



Divorce Case No. 51 of 2015 to the extent of expunging the observation/fact recorded against the defendant/appellant in the impugned judgment. The prayer stipulated in paragraph 1 of the miscellaneous appeal is re-produced hereinbelow with profit:-

“1. That the present Misc. Appeal is directed against the judgment dated 14.6.2017 and decree dated 30.6.2017 passed by the learned Principal Judge, Family Court, West Champaran, Bettiah, in Divorce Case No. 51 of 2015 to the extent that the following three observations therein have been made without any pleading and evidence to this effect:-

(i) she was living with her ‘bahnoi’ since 6.2.2013 casting aspersion and stigma on her character.

(ii) No one appeared on behalf of the O.P. for argument, whereas the order sheet itself shows that the counsels for the plaintiff and defendant were heard at least four times.

(iii) The O.P. herself filed several petitions stating therein that she was eager for divorce.

(iv) The plaint filed by the plaintiff on 10.4.2015 was allowed, but no plaint dated 10.4.2015 was existing on the record of the case.”

The factual matrix of the case is that the marriage between the defendant/ appellant and plaintiff/respondent was performed on 11.12.2012 but very shortly, the relationship between them got strained and ultimately Divorce Case No. 51 of 2015 was filed by the plaintiff/respondent, Girish Kant Choudhary alias Sunny in the Court of the learned Family Court,



West Champaran, Bettiah, for a decree of divorce, on dissolution of his marriage with the defendant/appellant Ahana Gupta @ Ahana Chaudhary on the ground of cruelty and desertion. The plaintiff/respondent claimed that the defendant/appellant was having illicit relationship with her brother-in-law and she deserted him by leaving the matrimonial house on 6.2.2013 after taking all her belongings. Further claim of the plaintiff/respondent is that the defendant/appellant refused to establish physical relationship with the plaintiff/respondent and after the marriage there was no consummation between them.

The defendant/appellant appeared in the said suit, filed her written statement, admitting the marriage with specific case that the plaintiff/respondent was not willing to establish physical relationship with her and due to non-fulfillment of demand of dowry, she was tortured and ultimately driven out of her matrimonial house on 6.2.2013 after snatching all her ornaments and personal belongings.

The learned Court below framed the following issues:

- “1. Is the suit as framed maintainable ?
2. Has the plaintiff got valid cause of action or the suit ?
3. Is the petitioner entitled to get a decree of divorce u/s 13 of Hindu Marriage Act in his



favour, declaring the dissolution of marriage tie with the O.P.

4. Any other relief the petitioner entitled.”

In support of his claim, the plaintiff/respondent adduced altogether four witnesses. P.W. 1 is Shyam Prasad, P.W. 2 is Gopal Pandey, P.W. 3 is Naresh Choudhary and P.W. 4 is Girish Kant Choudhary (plaintiff/respondent himself). They all have supported the case of the plaintiff/respondent to the extent that the defendant/ appellant declined to establish physical relationship with her husband and that she deserted her husband by leaving the matrimonial house on 6.2.2013.

The defendant/appellant chose neither to cross-examine the witnesses produced by the plaintiff/respondent nor to produce any witness. Hence, the learned Court below came to a conclusion that the plaintiff/respondent proved his case by virtue of the evidence of all the four witnesses adduced on his behalf, as a result the suit was decreed on contest and the marriage between the appellant and the respondent was dissolved. The learned Principal Judge, however, held that the defendant/appellant is not entitled for permanent alimony or maintenance since she is admittedly working as teacher in a Government school. Accordingly, the decree was prepared.



The defendant/appellant preferred the present Miscellaneous Appeal challenging the judgment dated 14.06.2017 passed by the learned Principal Judge, Family Court, West Champaran, Bettiah in Divorce Case No. 51 of 2015 only to the extent of expunging the above quoted observation or facts recorded by the learned trial court without any evidence to that effect.

A Division Bench of this Court vide order dated 22.6.2018, admitted the appeal and issued notice to the sole respondent. Consequently, the respondent entered appearance.

Subsequently, a supplementary affidavit dated 3.1.2018 has been filed on behalf of the appellant reiterating the prayer for expunging the above quoted observation/facts from the impugned judgment.

During the course of hearing, learned counsel for the appellant further confines the prayer only to the extent of expunging the observation/fact recorded against the appellant Ahana Gupta alia Ahana Choudhary in the impugned judgment to the extent that “She was living with her ‘bahnoi’ since 6.2.2013” recorded at page 1 of the impugned judgment, as the same is casting aspersion and stigma on her personal character.



It is submitted by learned counsel for the appellant that a frivolous accusation of adultery was levelled against the appellant without making the adulterer (bahnoi of the appellant) as party defendant and without leading evidence to that effect. It is further submitted that such observation/fact recorded in the impugned judgment has not only perturbed the mental status of the appellant, but has also tarnished her prestige.

Learned counsel for the respondent submits that since the appellant has not challenged the judgment on merit but has only confined her prayer for expunging the above quoted observation/fact recorded in the impugned judgment, the respondent has no objection if the same is expunged.

Considering the fact that the respondent has no objection for expunging the above quoted observation/fact and the appellant has confined her prayer only to the extent of above quoted observation, i.e., “she was living with her ‘bahnoi’ since 6.2.2013” as recorded at page 1 of the impugned judgment dated 14.6.2017, passed in the Divorce Case No. 51 of 2015 is hereby not treated to be part of the judgment and is accordingly, expunged.



With the aforesaid modification in the impugned judgment, this Miscellaneous Appeal along with I.A. No. 6777 of 2017 is disposed of.

(Dinesh Kumar Singh, J)

(Prabhat Kumar Singh, J)

Shashi/Anil/

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.08.2019.
Transmission Date	

