

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.841 of 2017

Ajit Kumar @ Ajit Ranjan, Son of Sri Ganga Sagar Singh, Residence of Village- Hasanpur, P.S.- Piparia, District- Lakhisarai. at present residing at Raghuwar Nagar, Bagha, P.O.- Sudhir Nagar, P.S.- Town, District- Begusarai.

... .. Appellant/s

Versus

Bina Kumari, Wife of Ajeet Kumar @ Ajeet Ranjan, Daughter of Yogendra Singh, Resident of Village- Hasanpur, P.S.- Piparia, District- Lakhisarai, at present residing at Village- Sahjadpur, P.S.- Barahiya, District- Lakhisarai.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. S. K. Lal, Adv. Mr.Pritish Kumar Lal, Adv.
For the Respondent/s	:	Mr.Fazle Karim, Adv. Mr. Binay Kumar, Adv.

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

Heard Mr. S. K. Lal, learned counsel for the appellant and Mr. Fazle Karim, learned counsel for the respondent.

The present Miscellaneous Appeal is directed against the order dated 31.07.2017 passed by learned Principal Judge, Family Court, Begusarai in Divorce Case No. 61 of 2014, whereby the appellant's matrimonial suit for a decree of divorce filed under Section 13 of the Hindu Marriage Act, 1955, on the ground of desertion and cruelty, has been dismissed on the ground that since the appellant's claim is that he was forcefully married with the respondent then a suit under Section 12 of the Hindu Marriage Act,



1955 (hereinafter referred to as 'the Act') for annulling the marriage ought to have been filed in the year 2006-07 and that an application for dissolution of marriage ought not to have been filed after such delay. The application for dissolution of marriage has been held to be not maintainable.

The plaintiff-appellant's case is that he was kidnapped on 15.07.2005 by the relatives of the respondent-opposite party from P.S. -Raghuwarnagar, District-Begusarai and was brought to Village -Sambalgarh Dariyapur, District- Lakhisarai, where, on the point of pistol, his marriage was performed with the respondent on the same day. Subsequently, the appellant-plaintiff somehow escaped from the custody of the relatives of the respondent and thereafter, the respondent's relatives used to threaten the appellant to keep the respondent as wife for which the appellant was not ready, as the marriage was not performed with the consent of the appellant. Subsequently, the appellant came to know that a criminal case being Lakhisarai Mahila P.S. Case No. 25 of 2013 has been filed on 02.07.2013 against the appellant and others with the accusation under Sections 498A, 406/34 of the I.P.C. and Sections 3/4 of the Dowry Prohibition Act.

The appellant and others preferred anticipatory bail application in the said criminal case. The learned ADJ, Lakhisarai,



while considering the anticipatory bail of the appellant, directed the appellant to keep the respondent as wife while mediating the issue between them. Consequently, the appellant brought the respondent to his house on 03.10.2013 and started leading conjugal life. Consequently, the relatives of the respondent used to come to the house of the appellant and coerced him to do everything as per the wishes of the respondent. The appellant was also abused and assaulted by the respondent's family several times. Subsequently, the respondent fled away from the house of the appellant and ultimately the learned Court below did not confirm the provisional bail. Thereafter, it appears that the appellant preferred Cr. Misc. No. 3468 of 2015 before this Court with a prayer for bail which was disposed of by a single Bench of this Court vide order dated 25.06.2015 granting provisional bail to the appellant for four months and directed the learned Court below to issue notice to the respondent to get the issue reconciled either by patching up the dispute or by way of one time settlement. Ultimately, the appellant filed Matrimonial Suit No. 61 of 2014 under Section 13 of the Act for dissolution of marriage on the ground that he was forcefully married to respondent as he was kidnapped and thereafter marriage was performed and on the ground that cruelty was inflicted upon him by the respondent wife. The marriage was never consummated.



The learned Principal Judge, Family Court, Begusarai recorded the statement of the plaintiff-appellant and the defendant-respondent under Order X Rule 1 of the Code of Civil Procedure (hereinafter referred to as the Code) where it was stated by the appellant that he was forced to marry the respondent after being kidnapped on 15.5.2005 whereas the respondent in her statement stated that the marriage was solemnized in accordance with Hindu customs, the marriage was attended by the father, elder brother of the appellant and others, and photography was also done on that occasion, which has been snatched by the family members of the appellant though she stayed in the matrimonial house for four months. By the order of the Court, the appellant was taking her to matrimonial house, but he left her on the way and fled away. Accordingly, the learned Court below came to a conclusion that since the marriage was performed forcefully in 2005, the appellant ought to have preferred a suit for declaring the marriage void under Section 12 of the Act in 2006 or 2007, but the matrimonial suit for dissolution of marriage was filed after substantial delay in the year 2014. Hence, the same is not maintainable

The only question in the present appeal to be considered is whether at the time of recording statement under Order X Rule 1 of the Code, the suit can be dismissed as non-maintainable or the



suit can be dismissed on the grounds mentioned in Order VII Rule 11 or whether the matrimonial suit for dissolution of marriage can be held to be not maintainable under Section 13 of the Act on the ground of delayed claim of forceful marriage alone, when the application was also filed on grounds of cruelty.

Mr. S. K. Lal, learned counsel for the appellant submits that at the stage of recording statement under Order X Rule 1, the suit cannot be dismissed as not maintainable. Since the respondent had entered appearance, the Principal Judge, Family Court ought to have allowed the respondent to file written statement, frame the issue, allowed the parties to lead evidence and then to have decided the suit on merits.

Learned counsel for the respondent submits that it is specific admission of the appellant in his statement recorded under Order X Rule 1 of the Code that the appellant was kidnapped and his marriage was performed with the respondent forcefully, then in that circumstance, the remedy available to him was to file a suit under Section 12 of the Act for getting the marriage declared void.

Considering the rival submissions of the learned counsels for the parties, this Court is of the view that the provisions for recording the statement under Order X Rule 1 of the Code permits the parties to ascertain whether the allegations in the pleadings are



admitted or denied. Order X Rule 1 of the Code reads as follows:

“Order X.

Examination of parties by the Court

R.1 Ascertainment whether allegations in pleadings are admitted or denied.- At the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.”

The Court can reject the plaint on the grounds mentioned in Order VII Rule 11 of the Code. Order VII Rule 11 of the Code reads as follows:

11. Rejection of plaint— The plaint shall be rejected in the following cases:—
- (a) where it does not disclose a cause of action;
 - (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
 - (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
 - (d) where the suit appears from the statement in the plaint to be barred by any law :

From reading of the plaint, it appears that the forceful



marriage is not the only ground on which dissolution of marriage has been claimed rather from the averments made in paragraph nos. 7, 13 and 16 of the plaint, it appears that the accusation of cruelty and torture has also been levelled.

It is true that under Section 13 of the Act, the marriage can be dissolved basically on three grounds – that other side after solemnization of marriage had voluntary sexual intercourse with any person other than his or her spouse; or after the solemnization of the marriage, treated the petitioner with cruelty or deserted the petitioner continuously for a period not less than two years immediately preceding the presentation of the petition; or has ceased to be a Hindu by conversion to another religion; or has been incurably of unsound mind or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Although, in his deposition under Order X Rule 1, the appellant has only deposed to the extent of forceful marriage being performed, but on bare perusal of his plaint, it can be appreciated that several instances of cruelty have been detailed out, which ought to have been considered and sought to be tried after framing of issue and leading of evidence to that effect. Forceful marriage



was, of course, one of the grounds, but it could not be said to be the sole ground for rejection of the suit at the threshold. Cruelty being one of the grounds for seeking dissolution of marriage under Section 13 of the Hindu Marriage Act, 1955, the suit cannot be said to be not maintainable, rather the suit ought to have been tried on the ground of cruelty.

A plaint can surely be rejected on the grounds mentioned under Order VII Rule 11 of the CPC and the said power can be exercised at any stage of the suit, but the same has to be exercised with utmost caution, since dismissal of a plaint at the threshold leads to serious consequences. In the circumstance, where the plaint raises arguable points, the same cannot be rejected with the aid of Order VII Rule 11 of CPC. Though in the present case, it is nowhere made clear that the suit is being dismissed in exercise of the said provision of CPC.

In view of the discussions made above, we do not find any reason to uphold the impugned order dated 31.07.2017 passed by learned Principal Judge, Family Court, Begusarai in Divorce Case No. 61 of 2014. Accordingly, the same is set aside and as such, the appeal is allowed.

The matter is accordingly being remanded back to the learned Principal Judge, Family Court, Begusarai and it is expected



from him to proceed with the suit in accordance with law.

However, it is made clear that this Court has not expressed any opinion with regard to the merits of the suit.

(Dinesh Kumar Singh, J)

(Arvind Srivastava, J)

Ashwini/-Anil/

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

