

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.713 of 2018

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Gunjesh Narayan Son of Sushil Kumar Resident of Mohalla - Chhatradhari
Bazar Hospital Chowk, P.S. Bhagwan Bazar, District - Chapra Saran.

... .. Appellant

Versus

Anjali Kumari Wife of Gunjesh Narayan, Wife of Anil Choudhary Resident of
Village - Sitalpur, P.S. Dighwara, District - Saran.

... .. Respondent

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Appearance :

For the Appellant/s : Dr. Alok Kumar Sinha, Adv.
For the Respondent/s : Mr. Raj Shekhar, Adv.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 03-02-2020

Heard learned counsel appearing for the appellant as
well as learned counsel for the respondent on the point of
admission and in our view, this appeal can be disposed of on
admission stage itself.

2. The appellant has preferred this appeal against the
judgment and decree dated 30.07.2018 passed by learned Principal
Judge, Family Court, Saran at Chapra in Divorce Case No. 219 of
2013 which was dismissed by the learned Principal Judge on the
ground that petition under Section 13-B of the Hindu Marriage
Act, 1955 had been filed prior to expiry of period of one year.



3. The appellant and respondent jointly filed a petition under Section 13-B of the Hindu Marriage Act for dissolution of their marriage by decree of mutual consent on 10.07.2013 and in the aforesaid petition, it was averred that their marriage was solemnized on 06.06.2012. The learned Principal Judge, Family Court vide order dated 16.04.2014 allowed the petition jointly filed under Section 13-B of the Hindu Marriage Act and accordingly, passed the decree of divorce by mutual consent dissolving the marriage of appellant and respondent. However, the respondent challenged the above stated judgment and decree dated 16.04.2014 by filing Misc. Appeal No. 349 of 2014 which was allowed by a Division Bench of this Court and accordingly, the matter was remitted to the Principal Judge, Family Court for passing a fresh and reasoned judgment.

4. The learned Principal Judge, having receipt of order dated 26.06.2015 passed in M.A. No. 349 of 2014, passed the impugned judgment and decree which is under challenge before this court.

5. Learned counsel appearing for the appellant submits that marriage of appellant and respondent was solemnized on 06.06.2012 and petition under Section 13-B of the Hindu Marriage Act was filed on 10.07.2013 i.e. after expiry of one year from the



date of marriage and taking note of the aforesaid fact, the learned Principal Judge passed the decree of divorce by mutual consent vide order dated 16.04.2014 but unfortunately, the respondent with ulterior motive challenged the aforesaid judgment of learned Principal Judge before this court by filing M.A. No. 349 of 2014 and the respondent pleaded before a Division Bench of this court that her marriage with appellant was solemnized on 06.12.2012 and petition under Section 13-B of the Hindu Marriage Act was filed prior to expiry of one year period and, therefore, petition filed under Section 13-B of Hindu Marriage Act was hit by Section 14 of Hindu Marriage Act. He further submits that a Division Bench of this Court took note of the aforesaid submission of respondent and without giving any opportunity to appellant to controvert the aforesaid submission, set aside the order dated 16.04.2014 passed by learned Principal Judge and remitted the matter to the court below for fresh decision. He further submits that the learned Principal Judge without taking any evidence and without giving any opportunity to appellant to controvert the claim of respondent passed the impugned judgment. He further submits that moreover, the respondent has already solemnized her second marriage which has been admitted by her in her counter affidavit and, therefore, in



the aforesaid circumstance, there is no need to keep this matter pending.

6. On the other hand, learned counsel appearing for the respondent fairly conceded this fact that respondent has already solemnized her second marriage but submitted that the appellant did not pay the amount which had been settled between appellant and respondent at the time of filing petition under Section 13-B of Hindu Marriage Act. He further submits that appellant has also solemnized his second marriage.

7. Having heard the above stated contentions of the parties, we went through the record along with lower court record. It is an admitted position that initially, the appellant and respondent filed joint petition under Section 13-B of Hindu Marriage Act on 10.07.2013 and in the aforesaid petition, date of marriage was disclosed as 06.06.2012. However, when the learned Principal Judge passed the judgment of decree by mutual consent of the parties, the respondent changed her stand and pleaded before a Division Bench of this Court that date of marriage was 06.12.2012 and a premature petition under Section 13-B of Hindu Marriage Act was filed by her as well as appellant. No doubt, a Division Bench of this court remitted the dispute of the parties to court below for passing a fresh judgment but the learned Principal



Judge failed to give opportunity to the parties to prove their date of marriage because there was controversy between the parties in respect of date of marriage. Moreover, it is an admitted position that both parties have already solemnized their respective second marriages.

8. No doubt, Section 14 of Hindu Marriage Act, 1955 says that a petition for dissolution of marriage by decree of divorce can be entertained after one year of the marriage but proviso of the aforesaid section says that the court may permit the parties to file petition under Section 13-B of Hindu Marriage Act, 1955 before expiry of period of one year in exceptional cases. In the present case, admittedly, when the parties jointly filed petition under Section 13-B of Hindu Marriage Act, they specifically pleaded that marriage had solemnized on 06.06.2012 and the aforesaid petition was filed after one year of the marriage and taking note of the aforesaid fact, the learned Principal Judge admitted the aforesaid petition for hearing. However, after passing of judgment and decree dated 16.04.2014, the respondent claimed before a Division Bench of this Court that her marriage was solemnized with appellant on 06.12.2012 and taking note of the aforesaid fact Division Bench of this Court remitted the matter to court below for passing fresh judgment. It is an admitted position that learned



Principal Judge did not give any opportunity to appellant to controvert the claim of respondent. Moreover, admittedly, both the parties have already solemnized their respective second marriages after passing the judgment and decree dated 16.04.2014 and now the only grievance of the respondent is that the amount which was settled between the parties at the time of filing joint petition under Section 13 B of Hindu Marriage Act was not paid to respondent. The above stated fact goes to show that fact of filing of joint petition under Section 13 B of Hindu Marriage Act has not been denied by the respondent.

9. Therefore, considering the aforesaid facts and circumstances, in our view, the learned Principal Judge, Family Court committed error in rejecting the joint petition filed by the parties under Section 13-B of Hindu Marriage Act and learned Principal Judge, Family Court, Saran, Chapra ought to have taken judicial notice of the aforesaid fact before passing the impugned judgment and decree. Accordingly, this appeal is allowed and the impugned judgment and decree dated 30.07.2018 passed by learned Principal Judge, Family Court, Saran at Chapra is, hereby, set aside and the marriage of the appellant and respondent is dissolved by a decree of mutual consent. Accordingly, the decree be prepared.



10. Both parties shall bear their own costs.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

shahzad/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	17.02.2020
Transmission Date	17.02.2020

