

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.501 of 2013

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Kumari Rekha W/O Shambhu Sharan Paswan And D/O Jagdish Prasad
Resident Of Mohalla- Choti Kishopur Kali No. 2, Police Station and P.O-
Jamalpur, District- Munger.

.....(Petitioner) Appellant/s

Versus

Shambh Sharan Paswan S/O Ghutar Paswan Resident Of Village-
Kanchangarh Gumati No. 7, P.O- Bank, Police Station- Mufassil, District-
Munger.

....(Respondents) Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ajay Thakur, Advocate Mr. Krishna Chandra, Advocate
For the Respondent/s	:	Mr. Ashok Kumar Choudhary, Advocate Mr. Akshansh Ankit, Advoacte Mr. Raj Kumar Choudhary, Advocate

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

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 04- 06- 2020

The instant appeal has been preferred against the judgment and decree dated 4.6.2013 and 11.6.2013 respectively whereby the petition under section 13 of the Hindu Marriage Act filed by the appellant for dissolution of her marriage with the respondent by decree of divorce was dismissed and the counter claim of the respondent for directing the appellant to restore conjugal life with the respondent was decreed.

The appellant filed a petition under section 13 of the Hindu Marriage Act, 1955 on 6.1.2009 in the Court of the Principal Judge, Family Court, Munger stating therein that her



marriage with the respondent was performed at Keshavpur, Jamalpur as per Hindu rites and customs on 24.4.1999. Out of wedlock, one female child namely, Kanak was born on 7.6.2001.

The case of the appellant was that since after the marriage, she was being tortured by the respondent. An agreement was executed on 6.5.2008 which would show that she was being tortured. It was further stated that her parents purchased a piece of land at Albert road in her name where a house was constructed. Thereafter, the respondent forced her to execute a sale deed in his favour and on her refusal, she was assaulted. She states that although after the agreement both led life as husband and wife but the torture continued and as such she sent a legal notice on 25.4.2008 to the respondent. It is stated that she filed a Sanha in the years 2002, 2004 and 2005 and on several occasions tried to pacify the matter but was not successful. Further the case of the appellant is that on competing, she joined as CDPO in Harlakhi Block on 11.3.2008. The respondent went to Madhubani on 31.12.2008 and snatched her salary. Further allegations have been made that the respondent came at the house of the appellant at Madhubani in a drunken state, assaulted her with fists and slaps, keeping



her hungry and also calling her 'kali' (of dark complexion). It is further stated that he forcibly locked the petitioner's house at Albert road, snatched the kevala and obtained her signature on a blank piece of paper which can be used for making false document to usurp the house. On 30.10.2008 she was assaulted by the respondent at the railway bridge on her refusal to make the sale deed. Further allegations have been made of the respondent pressing her neck and pouring kerosene oil on her body in an attempt to kill her by setting her on fire. As such the petitioner filed a Title Suit (matrimonial) no. 1 of 2009 in the Court of the learned Principal Judge, Family Court, Munger on 6.1.2009 for dissolution of her marriage by a decree of divorce, cost of suit and for any other reliefs to which she is found entitled.

A written statement was filed on behalf of the respondent wherein he admitted that the plaintiff was his legally wedded wife and from their wedlock, one child namely, Kanak was born. It was stated that the respondent was appointed as a teacher in the year 1995 and the marriage with respondent was solemnized in the year 1999. After marriage, the plaintiff began to live at her matrimonial home but she started to misbehave with the members of his family. The respondent was pressurized



by the plaintiff to leave his family, mother and brother and to reside at his in-laws place or else he and his family members would be implicated in a criminal case. As such in the year 2001-02 the respondent shifted at the parents' place of the plaintiff where he used to give maintenance and expenses of the plaintiff and himself to his mother-in-law. It is stated that on 25.9.2002 through a registered sale deed he purchased a piece of land at Jamalpur in the name of the plaintiff and constructed a house on the same in the year 2003. Thereafter he and the appellant started to live in the newly constructed house at Jamalpur but the appellant's mother and brother always used to intervene in their family affairs. On being selected, the appellant joined as C.D.P.O at Harlakhi Block, Madhubani in March, 2008. Soon after her joining she along with her mother and brother started to torture the respondent by various means and also keeping her entire earning. The respondent prayed that the matrimonial case filed by the appellant be dismissed with cost. Later the written statement filed by the respondent was amended on the prayer of counsel for both the parties.

After perusal of the pleadings of the parties the court was pleased to frame the following issues :-

- (1) Whether the respondent had subjected the



petitioner to cruelty after marriage ?

(2) Whether the petitioner is entitled to get decree of divorce on the ground of cruelty ?

(3) Any other relief ?

The case was thereafter put up for evidence. The plaintiff examined two witnesses on her behalf namely, PW 1 Kumari Rekha (plaintiff herself) and PW 2 Kanak (minor daughter of the plaintiff and respondent). On behalf of the respondent, only the respondent himself i.e. Shambu Sharan Prasad (RW 1) was examined.

Subsequently counter claim-cum-additional written statement was filed on behalf of the respondent on 19.1.2013 stating therein that after her selection to the post of C.D.P.O the appellant turned hostile to conjugal life with the respondent in collusion with her parents, bother and bahnoi (sister's husband). It was further stated that without any rhyme and reason the appellant has withdrawn from the society of the respondent since 20.4.2012 and the respondent prayed that the matrimonial (divorce) case filed by the appellant be dismissed and she be directed to restore conjugal life with the respondent.

In view of the counter claim, the issues which had been framed in the suit on 19.2.2013, were recast by order dated



22.5.2013 and are being reproduced herein below :-

- (1) Whether the respondent has subjected the petitioner to cruelty after marriage ?
- (2) Whether the petitioner is entitled to get decree of divorce on the ground of cruelty ?
- (3) Whether the petitioner has withdrawn from the society of the respondent without any rhyme and reason ?
- (4) Whether the respondent is entitled to get decree of restitution of conjugal life ?
- (5) Any other relief ?

On the issues which had already been framed, having been recast by order dated 22.5.2013, both the parties were given the opportunity to adduce additional evidence. Both of them stated that they had no further evidence to adduce. Thus, argument was heard and by judgment dated 4.6.2013 and decree dated 11.6.2013 the learned Principal Judge, Family Court, Munger was pleased to dismiss the suit filed by the appellant and allowed the counter claim of the respondent.

It was submitted by learned counsel for the appellant that ever since the marriage of the appellant with the respondent in the year 1999, the respondent started to torture the appellant



which would be evident from the oral and documentary evidence brought by her in course of trial. It is submitted that the deposition of the two witnesses i.e. herself and her 11 year old daughter together with the documents like the sanha filed from time to time, records of the title suit etc clearly make out a case for dissolution of marriage by a decree of divorce.

On the other hand, it is submitted by learned counsel for the respondent that the allegations as leveled by the appellant are not true and it was in fact the appellant who started to misbehave with the members of the respondent's family. It was submitted that the respondent who was a teacher since 1995 ie four years before marriage, because of the appellant's misbehavior started to live with her in his 'sasural'. However once the appellant joined as CDPO at Harlakhi Block in Madhubani in March 2008, her torture of the respondent increased. It was submitted that the differences, as narrated by the appellant, can be said to be quarrels which were trivial in nature and thus it was prayed that the appeal filed by the appellant be dismissed.

The appellant in support of her contentions has relied on the judgements in the case of Vijaykumar Ramchandra Bhate vs Neela Vijaykumar Bhate ((2003) 6 SCC 334), K Srinivas Rao vs



D. A Deepa ((2013) 5 SCC 226), K Srinivas vs K Sunita ((2014) 16 SCC 34) and the case of Praveen Mehta vs Inderjit Mehta ((20002) 5 SCC 706).

On the other hand the respondent has relied on the judgement in the case of Gurbux Singh vs Harminder Kaur ((2010) 14 SCC 301) and the case of Samar Ghosh vs Jaya Ghosh ((2007) 4 SCC 511).

Now, before proceeding with the consideration of the case of the parties, we may examine the evidence led by both the sides. As stated two witnesses namely Kumari Rekha (PW 1) the appellant and Kanak (PW 2) minor daughter of the appellant and respondent were examined on behalf of the petitioner while the respondent Shambhu Sharan Prasad (RW 1) examined himself as the sole witness on his behalf.

PW 1 Kumari Rekha in her deposition reiterated her case as stated in the divorce petition. She stated about her solemnization of marriage on 24.9.2019 with the respondent as per Hindu rites and customs and about the birth of her daughter from the said wedlock. She stated about the torture by the respondent and as a result of her hard labour of competing and joining as Child Development Project Officer ('CDPO' in short).



She further states that she was forced to execute an agreement on 6.5.2005 and was physically and mentally tortured. Seeing this her parents purchased a piece of land in her name and got a house constructed thereon. She states that the respondent used to force her to transfer the said house in his name and on her not doing so, the torture continued. Even after execution of the agreement, the respondent continued to abuse and beat her up on which her parents asked the respondent to come and live in his '*sasural*'. Here also his behaviour did not change and as such she got a legal notice dated 25.4.2005 sent to him through an advocate. P.W. 1 further states that having got fed up with the continued torture by the respondent and for the safety of her daughter, she lodged a Sanha bearing no. 2564/04 dated 16.12.2004 and another Sanha bearing no. 895/2005 in Munger. Her mother had also lodged a Sanha in the year 2002 against the respondent.

P.W 1 further states that as a result of her hard labour, she got appointment on the post of CDPO and joined on 11.3.2008. On 30.12.2008 the respondent came to Madhubani and forcibly took away all her salary. On 25.12.2008 she was beaten up by the respondent who was in an intoxicated state. He used to make fun of her being of dark complexion. On 30.10.2008 she was



beaten up and pressing her neck the respondent poured kerosene oil and made an attempt to burn her. He made frivolous allegations against her parents and also against her sister's husband who was like a father to her. The respondent filed Title Suit no. 81/2009 with the intention to usurp her house. Thereafter, he lodged Case no. 746/09 making allegations of theft having been committed against the members of her parent's family. In her cross-examination PW 1 has stated that prior to the year 2008 she had not filed any criminal case against the respondent. Sanha had been lodged by her mother against the respondent in the year 2002 and thereafter, by her in February 2004, December 2004 and April 2005. In the civil case filed by the respondent with respect to her house, the appellant did not appear in Court. The husband used to stay at her '*maike*' (parent's place) since five months after their marriage and he continued to stay there till the year 2004. Thereafter, they shifted to Sunder Nagar Colony in Jamalpur where her parents had purchased the house and lived there till October 2008. She joined her service in March 2008 and was posted in District Madhubani. Occasionally she used to come and reside in Sunder Nagar Colony where as a result of fight between them in October 2008, the petitioner and respondent started to live



separately. She further states in her cross-examination that with respect to the respondent beating her up, she had reported the matter to the police but the police did not take any action. The case under the Dowry Act filed by her is going on in Munger. This witness denied the suggestion that she had filed a false case and had made incorrect statements. She also denied the suggestion that after she became employed, her nature changed and that as she was on a higher post, she had lodged a false case.

PW 2 Kanak who is the 11 year old daughter of the appellant and respondent was tested by the learned court below with respect to her competency to depose and the learned court below came to a finding that PW 2 was competent to depose. In her examination-in-chief she stated that she saw that the respondent used to trouble the appellant and also used to beat her up. The respondent used to tell the appellant to stay with her mother and also used to reside there. The beating continued at her *nani's* (maternal grandmother) place. As such her maternal grand mother got a land purchased for her parents and got a house constructed. As her parents had shifted there, when she was 4 - 4½ years old she also moved. Her father used to beat her 'mummy' there also and wherever they stayed, she was tortured by the respondent. In her cross - examination PW 2 states that



her mother (PW 1) got employed in the year 2008. She states that she used to have good communication with her maternal grandmother who was critical of her father (respondent). Her maternal grandmother passed away in the year 2011 and her father had attended her last rites. She states that this case is going on since the year 2009 and before filing of this case her mother (PW 1) had consulted and discussed with her, her *Nani*, *Mausi* (mother's sister) and other members of the family. She states that she has deposed the things that she has seen with her own eyes. She has taken the permission of her mother before coming to Court but it is not correct that she is deposing as a result of her fear.

PW 2, in her deposition further stated to the Court that her parents had got married on 24.4.1999 where after her mother stayed in her *sasural*. Both the appellant and the respondent stayed together till the year 2008. In the year 2008 her father used to live in the house at Nayagaon while her mother was posted in Madhubani and she used to visit Nayagaon once in a while. On some occasions her father also used to go to Madhubani. She further states that most of the time her father used to stay with her mother in Madhubani and used to go sometime to attend his duty in Nayagaon. At this time she was



staying in Sindri with her *mausi* as her father told her to stay there for the reason that as he would be staying with her mother in Madhubani, there would be no one to look after her in Nayagaon. In the year 2010, she states that she came and resided with her maternal grandmother in Sindri for six months, where her father used to take her to and get her from the school. At the said time their relations was good. However, on some occasions he used to beat her mother but on some occasions the relations with mother also used to be good. The last occasion that she stayed with her mother and father was in the year 2008 in Nayagaon on the occasion of her summer holidays. There were three rooms in the said house. However, all the three of them used to sleep in the same room on the same bed. Even thereafter, her mother and father remained together on a number of occasions for example in Madhubani, in Nayagaon and in Jamui and at these places also they used to sleep together.

RW 1 Sambhu Sharan Paswan in his deposition has stated that he got married to the appellant on 24.4.1999 and out of the said wedlock a girl child was born on 7.6.2001. He was appointed as a teacher on 18.12.1995 and continued to work in that capacity. At the time of their marriage, the appellant was a student who had cleared her BA and had started preparing for



competitive examinations. She lodged the false case in the year 2009 under the influence and at the instigation of her mother and brother. His mother-in-law continued to pressurize him to give all his earnings to his in-laws family. His daughter Kanak used to reside with his brother-in-law (*Sarhu*) and study in Sindri, the expense of which was borne by him. There was extra- marital relationship of the appellant with her brother-in-law.

The divorce suit was filed by the appellant primarily on the ground of mental cruelty. The two main grounds of cruelty, which is made out from reading of the plaint besides the physical assault on her, is that at times the respondent used to call the appellant as '*Kali*' meaning that she was of dark complexion and that she had given birth to a girl child.

It would be relevant to point out here that in the written statement filed on behalf of the respondent on 4.4.2009, there was no allegation contained therein of the appellant having any extra marital relationship. It was subsequently by way of amendment which was allowed by order dated 27.9.2012 that the written statement filed by the respondent was permitted to be amended by introduction of paragraph numbers 5A, 5B, 5C and 5D wherein for the first time the allegation of the appellant



having illicit relation with Shankar Ram i.e. her brother-in-law, came to be mentioned. By order dated 27.9.2012 itself, while allowing the said amendment, liberty was granted to the appellant that she may file an additional plaint, if she wanted.

Pursuant to the prayer for amendment having been allowed by the aforesaid order dated 27.9.2012, an amended written statement was filed on behalf of the respondent on 23.11.2012. Subsequently on 19.1.2013 a counterclaim cum additional written statement was filed on behalf of the respondent praying therein that the matrimonial divorce case be dismissed and the plaintiff be directed to restore conjugal life with the respondent.

The issues which had been framed by order dated 19.2.2013 were recast and additional evidence was invited from both the parties, however both of them stated that they have no further evidence to adduce. Further from perusal of the issues, which have been reproduced herein above, it would transpire that based on the amended written statement making allegations of extra marital relationship between the appellant and her brother-in-law, admittedly the trial court did not frame any issue and no evidence was led in support of the same.

Now coming to the evidence led by the parties, it transpires that divorce suit was filed mainly on the ground of mental



cruelty. Besides allegation of assault etc for which *sanha* was lodged by or on behalf of the appellant in the years 2002, 2004 and 2005, admittedly, no criminal case was filed by her against the respondent. It further transpires that as per her case, on 6.5.2005 the appellant was forced by the respondent to execute an agreement with respect to the house on Albert Road. However, inspite of the torture being meted out to her by the respondent, as a result of the dint of labour she competed as Child Development Project Officer and joined on the said post on 11.3.2008. It further transpires from the records of the case together with the deposition of the respondent that it was in the year 2009 that the divorce case was filed by the plaintiff in the court of Principal Judge, Family Court, Munger and a criminal case was also filed by her which was numbered as Case no. 17C/2009.

It would also be relevant to mention here that Title Suit no. 81/2009 was filed by the respondent. As per the plaintiff, the said title suit was filed with the intention to usurp her house. In her deposition she categorically states that she did not appear in the said suit and the respondent withdrew the same.

Further another criminal case bearing Case no. 746 of 2009 was filed by the respondent making allegations of theft against



the parents and other family members of the appellant. This case also, as per the deposition of the appellant was withdrawn by the respondent.

On going through the evidence of the parties, it transpires that only five months after the marriage of the plaintiff and the respondent, the respondent came to his '*sasural*' and started to live with the appellant and her parents. Thereafter as the relationship between the appellant and the respondent did not improve, as per the appellant, her parents purchased a piece of land at Albert Road and got constructed a house thereon. The appellant and the respondent resided with the appellant's parents till 2004 when they shifted to Sunder Nagar colony in Jamalpur and resided there till October 2008. As per the case of the appellant, it was in October 2008 that they started to live separately.

As per the case of the appellant herself, although she was being tortured by the respondent from the very beginning, *sanha* was filed with respect to the occurrence in the years 2002, 2004 and 2005, However no criminal case came to be filed by her. She further states that with respect to the house on Albert Road, the respondent forced her to execute an agreement on 6.5.2005 and also forced her to sign on blank piece of papers. Still no case was lodged by her. Her further case is that after



she joined as Child Development Project Officer on 11.3.2008 in Block Madhubani, the respondent assaulted her under the influence of intoxicant on 25.12.2008 and a few days later on 30.12.2008 forcibly took away her salary. Surprisingly, still no criminal case was lodged by the appellant against the respondent nor was the matter reported to the police.

The petitioner in her cross-examination states that her husband, the respondent herein started to reside with her at her parents place just after five months of their marriage. The marriage had taken place in the year 1999 and she joined service as CDPO in March 2008. She further states that in October 2008, on the occasion of Diwali she had come to her house at Sundar Nagar where she had a fight with the respondent and they started to reside separately. She states that she had reported the matter to the police, but the police took no action. On the other hand, PW 2 Kanak, who happens to be the only child/daughter of the appellant and the respondent, in her deposition states about the relationship between her parents in the year 2008 as also thereafter. She states that her father used to reside at the house in Nayagaon from where her mother used to commute to her place of work occasionally which was at Madhubani. She further states that her father used to reside with her mother at



Madhubani also and used to attend to his duty at Nayagaon. She further states that her father told her that as no one was going to reside at Nayagaon, she should stay with her *Mausi* at Sindri. The PW 2 categorically states that her parents lived together till the year 2008. Although there were three rooms in the house, but the three of them used to sleep in the same room on the same bed. She further states that even thereafter both her mother and father lived together in Madhubani, in Nayagaon as also in Jamui.

So far as the judgments in the case of Vijaykumar Ramchandra Bhate vs Neela Vijaykumar Bhate (supra) is concerned, in the said case the question arose as to whether the averments, accusations and character assassinations of the wife by the appellant husband in the written statement constituted mental cruelty for sustaining the claim for divorce under section 13 of the Hindu Marriage Act, 1955. The apex court held that the allegations were of such quality, magnitude and consequence as to which caused mental pain agony and suffering. The result being that the wife would feel so deeply hurt and would reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that. The judgement has been cited by the appellant in view of the fact that after the amend-



ment in the written statement was allowed, in paragraph number 5B and 5D of the amended written statement filed by the respondent-husband, allegations of extra marital relationship between the appellant with her brother-in-law had been made. It may be stated here that the instant judgement in the case of Vijayakumar Ramchandra Bhate (supra) is not of much help to the appellant in view of the judgement cited on behalf of the respondent in the case of Gurbux Singh vs Harminster Kaur (supra). In the case of Gurbux Singh, the apex court, taking note of the judgement in Vijaykumar Ramchandra Bhate held that no doubt, the court had held that allegations made in the written statement or suggested in the cross examination has also to be taken note off while considering the claim of either party, however, as the trial court had not framed any issue and no evidence had been led in support of the same, the decision in the said case was not helpful to the present case. Thus going through the above two decisions as also the facts of the instant case, it transpires that even in the instant case, in the suit no issue was framed by the court below (and no evidence led) with respect to cruelty as a result of the averment made by the respondent in paragraph nos. 5B and 5D of the amended written statement. Thus this court comes to the conclusion that the judgement in



the case of Vijaykumar Ramchandra Bhate is of no help to the appellant herein.

The next judgement cited on behalf of the appellant is in the case of K Srinivas Rao vs D A Deepa (supra). In the said case, the apex court held that though the offence under section 498A of the Indian Penal Code was not compoundable, in appropriate cases, if the parties are willing and if it appears to the criminal court that there exist elements of settlement, it should direct the parties to explore the possibility of settlement through mediation. The apex court proceeded to hold that if there is settlement, the parties will be saved from the trials and tribulations of a criminal case and that will reduce the burden on the courts which will be in the larger public interest. It observed that in terms of section 9 of the Family Courts Act, the family court shall make all efforts to settle the matrimonial disputes through mediation. It may be stated here that so far as the facts of the instant case is concerned, the ratio of the said judgement has no application herein.

The next judgement relied-on on behalf of the appellant is in the case of K Srinivas vs K Sunita (supra). The judgement in the said case which arose out of a petition of divorce under section 13 of the Hindu Marriage Act, the apex court held that irre-



trievable breakdown of marriage, although not a statutory ground of divorce as yet, but the Supreme Court in exercise of its powers under Article 142 of the Constitution has powers to pass such decree or make such order as is necessary for doing complete justice. It was further held that pleadings with respect to filing of false criminal complaint by the respondent wife was not created pleaded by the appellant husband in divorce petition for the reason that the criminal complaint was filed subsequent to filing of the divorce petition by the husband. The same being a subsequent event, the court could have looked into it. The facts of this case being completely different, this judgement has no applicability in the instant matter.

The appellant next relies on the judgement of the apex court in the case of Praveen Mehta vs Inderjit Mehta (supra). In this case the apex court held that under section 13 of the Hindu Marriage Act, 1955, cruelty includes both physical and mental cruelty. The legal conception of cruelty and the kind of degree of cruelty necessary to amount to a matrimonial offence has not been defined under the Act. The apex court proceeded to hold that unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the



case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty.

Having heard learned counsel for the parties and from the records of the case it transpires that although there has been differences between the appellant and the respondent which led to filing of *sanhas* at different intervals in the years 2002, 2004 and 2005, however, the differences cannot be said to be such as a result of which it may be said that the marriage between the petitioner and the respondent has broken down irretrievably. The admitted conduct of the respondent would show that just six months after his marriage he proceeded to live with the petitioner at her parents place i.e. his *sasural*. The respondent had been working as a teacher since the year 1995 i.e. since prior to his marriage which took place in the year 1999. The petitioner in her evidence mentions about the acts of physical and mental



cruelty of the respondent, However admittedly besides the *sanhas* filed on her behalf on the aforesaid three occasions, admittedly no FIR was registered nor any criminal complaint filed. Even as per her case, she was appointed as a Child Development Project Officer in March 2008 and only thereafter pursuant to a fight with the respondent that she and the respondent started to live separately since October 2008. This statement made by the petitioner in her deposition also does not hold good in view of the deposition of her 11 year old daughter who has been examined as a witness on her behalf. PW 2 has categorically stated that even after the year 2008 her mother and father stayed together on a number of occasions at Madhubani, at Nayagaon and at Jamui. Thus as held in clauses (ix) and (x) of paragraph no. 101 in the judgement of the apex court in the case of Samar Ghosh versus Jaya Ghosh (*supra*), the differences between the parties as narrated by them can at best be said to be mere trivial irritations and quarrels which happens in day to day life of married persons. The case and the evidence when reviewed as a whole, in the opinion of this court, would not amount to cruelty. Thus, in the facts and circumstances of the case, the petitioner appellant is held not entitled to the relief for dissolution of her marriage with the respondent by a decree of divorce and as such



the same is dismissed. Further in view of the conduct of the respondent together with the material that has transpired in the deposition of the minor daughter of the appellant and respondent who has been examined as a witness in the case, the respondent is held to be entitled to get a decree of restitution of conjugal rights, as held by the learned court below.

Thus, not finding any merit in the instant appeal, the judgement and decree impugned herein are affirmed and the instant appeal is dismissed.

(Partha Sarthy,J)

Hemant Kumar
Srivastava,J I agree

(Hemant Kumar Srivastava, J)

Prakash/-

AFR/NAFR	
CAV DATE	13.11.2019
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