

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.835 of 2022

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Satyam Prakash @ Satyam Praksah Singh Son of Late Swyambhoo Nath Singh Resident of Village- Chakbasu, Ward No.- 38, P.S.- Mithanpura, P.O.- Ramna, District- Muzaffarpur.

... .. Petitioner/s

Versus

Khushboo Singh Daughter of Sri Arun Kumar Singh, Wife of Satyam Prakash Singh Resident of Village- Rasulpur, P.O.- Harikewal, P.S.- Bhagwanpur, District- Vaishali, presently residing at in the house of Sri Devendra Chaudhary, Advocate, Mohalla- Rambag, Near Lijjat Papad Factory, P.O.- Ramna, P.S.- Mithanpura, District- Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Umesh Chandra Verma
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 21-12-2022 The petitioner-husband filed Matrimonial Case No. 44 of 2017 seeking decree of divorce from the respondent-wife on the ground of cruelty, with the following reliefs:

“A. On consideration of the facts stated in the Matrimonial Case, the learned court be pleased to dissolve the marriage of the applicant with the opposite party by passing a decree of dissolution of marriage.

B. The learned court be pleased to pass a decree awarding custody of the minor son of the applicant keeping in view his paramount welfare.

C. The learned Court be pleased to pass a decree for any other relief or reliefs in favour of the applicant and against the opposite



party, to which the applicant is found entitled to.”

The grievance of the petitioner is that while framing the issues, the proposed issue no. 12 regarding the custody of his minor child has not been taken into consideration while passing the impugned order, dated 23.09.2022, whereby the learned Principal Judge, Family Court, Muzaffarpur, has settled the issues again.

Learned Counsel for the petitioner submits that the issues were already framed on 02.07.2018, as such, re-settling the fresh issues on the ground that the sheet containing the issues framed earlier has lost and that too without holding an enquiry in accordance with law is erroneous. He further submits that the learned Family Court is not justified in settling the issues again ignoring the proposed draft issues filed by the petitioner regarding the custody of the child.

I have heard learned Counsel for the petitioner and have gone through the materials available on record, including the impugned order.

From the impugned order, it appears that the sheet containing the issues framed earlier was found missing from the record of the matrimonial case. Accordingly, the learned Family



Court again settled the issues with the consent of both the parties. Insofar as the contention of the petitioner regarding framing of issue pertaining the custody of the minor child is concerned, it goes without saying that the petitioner has claimed Relief No. B regarding the custody of minor son and Issue No. 3 framed by the learned Family Court, on 23.09.2022, is that as to what relief or reliefs, the applicant is entitled for. Furthermore, Section 26 of the Hindu Marriage Act, 1955, empowers the Court to pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children.

Accordingly, in my opinion, this application is misconceived inasmuch as the issues have been settled with the consent of the parties and under Section 26 of the Hindu Marriage Act, 1955, the Court can make provision in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children.

In the result, this application is dismissed.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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