

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.949 of 2019

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Kundan Kumari D/o Late Kedar Prasad Resident of C/o Surendra Yadav,
village- Gopkita, P.s.- Pandarak, District- Patna

... .. Appellant/s

Versus

Vinod Kumar S/o Surju Prasad Yadav Resident of Village- Lodipur, P.s.-
Khusrupur, District- Patna

... .. Respondent/s

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Appearance :

For the Appellant/s : Ms. Shilpi Keshri, Adv.

For the Respondent/s : Mr. Vishwa Ranjan Choudhary, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 17-11-2022

Heard Ms. Shilpi Keshri for the appellant/wife and

Mr. Vishwa Ranjan Choudhary for the respondent/husband.

The present appeal has been filed against the *ex-parte* judgment of the Family Court on 02.05.2019 declaring the marriage of the appellant with the respondent to be a nullity.

We find from the judgment that there is no discussion with respect to any effort of the Court to have the appellant/wife served before the *ex-parte* judgment was passed. The records however reveal that the notices were issued to the appellant but, she was not served as the process server could not meet her. Thereafter, at the instance of the respondent/husband, the paper notification was issued, which too was not responded.



We are constrained to observe that these aspects ought to reflect in the judgment for the appellate court to know that all efforts had been exhausted and there was no way out than passing an *ex-parte* order.

The charge of the respondent is that he was forcibly subjected to marriage at the instance of the relatives of the appellant in the night of 3rd and 4th of December, 2017.

Three witnesses on behalf of the respondent have deposed before the Family Court about the forcible marriage of the respondent with the appellant. Reference of the Complaint Case No. 14 of 2018 has also been made in the *ex-parte* order.

Without going into the merits of the findings of the Family Court, we are of the view that an opportunity ought to be given to the appellant to contest the matrimonial suit.

For that reason alone, we set aside the *ex-parte* judgment and order of the Family Court and remit it to the same Court to enable the parties to adduce their respective evidence whereafter the Family Court shall pronounce the judgment.

The appellant now shall not eschew from appearing before the Family Court or from accepting the notices, which shall be sent by the Family Court within fifteen days of the receipt/production of a copy of this order by the respondent.



It is expected that after the appearance of the appellant before the Family Court, the Court shall proceed with the trial on day-to-day basis for much time has already elapsed since the suit was instituted and shall conclude the proceedings within a period of four months thereafter.

The appeal stands allowed to the extent indicated above.

(Ashutosh Kumar, J)

(Nawneet Kumar Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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