

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1046 of 2018

Abhishek Anand Son of Prof. Ramdeo Yadav Resident of Murliganj, Ward No.12, P.O. and P.S. Murliganj, District- Madhepura.

... .. Appellant/s

Versus

Rani Kumari Daughter of Sri Maheshwar Kumar Vinit Resident of Mohalla-Batraha, Ward No.25, P.O. and P.S. Saharsa, District- Saharsa.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. S.B.K. Mangalam, Adv.
For the Respondent/s : Mr.

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 Mr. S.B.K. Mangalam, learned counsel for the
appellant/husband.

The appellant/husband grieves that his wife is neither ready to join him in the matrimonial fold nor is she agreeable to contest the case of divorce.

The impugned judgment, rejecting the prayer of the appellant for passing a decree of divorce on the ground of desertion and cruelty, has been passed even though the respondent/wife never appeared in the suit, notwithstanding her father having received the notice on her behalf with whom she has been residing. Before this Court also, there is no



representation on behalf of the respondent/wife. The notice to the wife was accepted by her father in this case as well but, there is no appearance on her behalf.

The learned counsel for the appellant has filed an affidavit of jointness of the respondent with her father, which has been accepted by this Court.

The case of the appellant is that right from beginning of the marriage on 08.05.2016, the behaviour of his wife/respondent was one of complete indifference, creating a tortuous atmosphere at home, which is in fact is an act of cruelty. Whenever a complaint was made by the appellant to the father of his wife, it was met with a stout rebuff. The wife, according to the appellant, clearly disclosed before him that she is interested in somebody else. On one occasion, the respondent/wife agreed for mutual divorce but behaved irrationally when an attempt was made by the appellant to have the papers signed for filing a petition for mutual consent. Ever since, the respondent/wife has been staying away from the appellant and had no physical contact. Even then, the



Family Court has dismissed the suit for lack of proof of either desertion or cruelty.

The two witnesses including the appellant himself were disbelieved by the trial court for the reason of vagueness of the charges.

Mr. Mangalam submits that the fact that the respondent/wife never appeared before the Family Court, notwithstanding her father having received notice on her behalf with whom she has been residing and she has not even appeared before this Court, is good enough evidence of desertion at the instance of the wife who is not even interested in rebutting the allegation of the appellant.

True it is that the deposition of the father of the appellant is vague but, the circumstances narrated above clearly demonstrate that the respondent/wife is not interested in living in the matrimonial fold with the appellant or else she would have contested the case.

We would have otherwise thought of noticing the respondent/wife through paper publication but finding that such step had been taken by the court below, which did not yield



any result and also in view of the affidavit of jointness of the respondent with her husband, who has received the notice on her behalf, we deem it appropriate to dispose of this appeal finally.

The grounds raised by the appellant is though required to be tested and proved but, in the absence of the respondent/wife, there is no way in which such contentions can be rebutted. However, thrusting our opinion on the continued absence of the respondent from the proceedings before the Family Court and this Court, we conclude that the relationship of husband and wife is non-existent.

There is no effort on the part of the respondent to even ask for restitution of conjugal right or payment of matrimonial dues. This is again an evidence of the complete abandonment of the relationship at the instance of the respondent/wife.

Regard being had to the aforementioned circumstances in the present appeal, we find that allowing this litigation to be continued endlessly would serve no good purpose.



For the reasons which have been noted above, the judgment and decree in the suit, which has been dismissed by the Family Court, is set aside.

The appellant and the respondent are declared to be divorced.

This declaration would be a decree reflecting cessation of relationship between the spouses.

The appeal stands allowed.

(Ashutosh Kumar, J)

(Nawneet Kumar Pandey, J)

rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.11.2022
Transmission Date	

