

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.100 of 2020

Sumitresh Kumar Kaushal aged about 32 years son of Sri Satya Narayan Thakur, C/O Kailash Prasad Rai, Resident of Village-Dharampur Chowk, Ward No. 10, PS Samstipur, Distt-Samastipur.

... .. Petitioner/s

Versus

Kabita Kumari wife of Sumitresh Kumar Kaushal d/o Anajani Kumar, C/O Kailash Prasad Rai, Resident of Village-Dharampur Chowk, Ward No. 10, PS Samstipur, Distt-Samastipur. Permanent Address- Village+PO, Musapur, PS-Mufassil, Distt-Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajive Ranjan Singh
For the Respondent/s : Mr. Bijay Bhushan Prasad

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

6 03-11-2022 Heard Mr. Rajive Ranjan Singh, learned counsel for the petitioner and Mr. Shanti Bhushan Prasad for the respondent.

2. Pursuant to the order dated 11.10.2022, the respondent/wife is present in this Court in person and has filed an affidavit before the Court stating therein that she is ready for divorce with mutual consent. However, petitioner/husband has not appeared before this Court in person and has not filed any affidavit in this regard.

3. Accordingly, the present case is being disposed of on its own merit.

4. Petitioner is aggrieved by an order dated 11.07.2019 passed in Execution Case No. 2 of 2014, whereby



the learned Principal Judge, Family Court, Samastipur after arriving at the conclusion that the judgment-debtor i.e., respondent-wife is not willing to join the society of the petitioner, the decree holder as his wife and there is no scope under the law to compel the wife to lead conjugal life with her husband, has rejected the execution case filed by the petitioner pursuant to the ex-parte decree obtained by him under Section 9 of the Hindu Marriage Act for restitution of conjugal rights.

5. Learned counsel for the petitioner submits that the decree of restitution of conjugal rights is executable under Order 1 Rule 33 CPC and the learned Family Court has failed to exercise its jurisdiction properly and has committed material irregularities in dismissing the execution case filed by the petitioner.

6. On the other hand, learned counsel for the respondent-wife submits that wife is not at all ready to join to the society of the petitioner and is not willing to reside with him as his wife. As such, she cannot be compelled to lead a conjugal life with her husband against her will.

7. I have heard learned counsel for the parties. This court in order to explore the amicable settlement between the parties had called both husband and wife in person in present



proceeding and on query made by the court to the wife as to whether she is willing to reside with her husband, she flatly refused and said that she is not willing to reside with her husband.

8. Hon'ble Supreme Court in the case of ***Samar Ghosh v. Jaya Ghosh*** reported in ***(2007) 4 SCC 511*** has held as follows:-

"74. We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

75. ****

76. Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist."

9. It appears that the learned Family Court has taken into consideration the judgments of the Supreme Court and other High Courts and the fact that the wife cannot be compelled to live and start the conjugal life with her husband



against her will has rejected the petition for execution of ex parte decree under Section 9 of the Hindu Marriage Act filed by the husband.

10. In view of the aforesaid discussion and the fact that the respondent/wife is not ready to reside with her husband, as such, I do not find any material irregularity in the impugned order, accordingly, this application is rejected.

(Anil Kumar Sinha, J)

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