

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.542 of 2018

In
Miscellaneous Appeal No.1122 of 2016

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Shri Ashish Ranjan Kumar Mishra @ Shri Ashish Ranjan Kumar @ Munna
S/o Prabhat Kumar Mishra R/o Village- Parari, P.O.- Taranagar, P.S.- Bihta,
District- Patna

... .. Petitioner/s

Versus

Smt. Ruby Devi W/o Shri Ashish Ranjan Kumar @ Munna, D/o Ravi Shankar
Pathak R/o at P.O.and P.S- Bihta, District- Patna

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Kumar, Advocate

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-04-2023

1. The review petition is concerned with an application filed for divorce on mutual consent, which consent was subsequently withdrawn by the wife. On such withdrawal of consent being affected, the Court below dismissed the application. An appeal was filed against the order of dismissal of the application for



divorce on mutual consent, passed on 04.08.2015 in Matrimonial Case No. 5379 of 2014 by the Principal Judge, Patna.

2. It was noticed that initially the appellant had filed a Matrimonial Case under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. After service of notice, there was some agreement between the parties and a petition under Section 13(B) of the Act was filed by the parties for divorce on mutual consent. The appellant husband then withdrew the case filed for restitution of conjugal rights and also complied with certain conditions agreed upon for dissolving the marriage. Later the wife withdrew the consent and the application under Section 13(B) stood dismissed. In the appeal, the wife did not appear despite service of notice.

3. The ground raised by the appellant was that there was no affidavit filed by the respondent/wife before the Family Court. A Division Bench of this Court found that there is no provision of law under which withdrawal has to be brought before Court, on affidavit. Quoting section 13(B), it was found that after the petition for divorce on mutual consent was instituted, within six months and eighteen months from the date of filing, it has to be confirmed by the parties regarding, such consent having been continued and existing for the purpose of annulment of marriage.



If one of the parties withdraws the consent, the Court below has to necessarily reject the claim and there is no requirement for a withdrawal to be brought before Court on an affidavit. It was also noticed that the wife, who had withdrawn the consent and who is alleged to have not agreed to such withdrawal has never raised a complaint regarding the dismissal of the application. The appeal stood dismissed and it is against that judgement that the present review has been filed.

4. There is absolutely no ground for review stated in the review application especially none of an error on the face of the record. The review petitioner has dilated upon the law regarding consent and the requirement of expeditious conclusion of trial; which are not necessary grounds for a review. Then again, it is pointed out that even the Hon'ble Apex Court has declared that there could be circumstances in which the gestation period of six months and eighteen months could be waived. There can be no dispute to the above proposition but however, that requires both the parties to approach the Court and satisfy the Court on why such waiver would be expedient on the facts and circumstances of the case. The contention that, it is only prudent to find that consent once given, is not liable to be withdrawn; goes against the very statutory provision. It is trite that there can be no estoppel against



the statute and the statutory requirement will have to be complied scrupulously unless the Court permits deviation, on its satisfaction which also has to be based on the statutory provision or the interpretation of the provision by Constitutional Courts.

5. We find absolutely no reason to review the order passed and reject the review petition.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

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AFR/NAFR	NAFR
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