

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.638 of 2016

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Leela Devi W/O Birendra Bhagat D/O Ram Bilash Bhagat, R/O village
Pahalam. PS. Banamaltahari, District- Saharsa

... .. Appellant/s

Versus

1. Birendra Bhagat son of Dinanath Bhagat Resident of Village Singeshwar
Durga Chowk Lahari Tola, PS. Singeshwar, District- Madhepura
2. Purushottam Bhagat son of Rameshwar Bhagat Resident at Saraswati
Mobile, Durga Chowk PS. Singeshwar, District- Madhepura

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Sharda Nand Mishra, Advocate

For the Respondent/s : Mr. (Dr.) Sanjay Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 04-01-2023

Heard Mr. Sharda Nand Mishra, learned Advocate for
the appellant/applicant and Dr. Sanjay Kumar Singh, learned
Advocate for the respondent/husband.

This appeal against the judgment of the Family Court
granting divorce of the couple was challenged after three years and
seven months by way of instant miscellaneous appeal.

On the issue of limitation, notice was issued to the
respondent pursuant to which he has appeared.

Dr. Sanjay Kumar Singh, learned Advocate for the
respondent/opposite party has drawn the attention of this Court to
the fact that on 27.05.2010, he was directed by the Court to give



the address of the maternal home of the appellant which he had provided, on which notice was issued but there is no report of such notice having been served upon the appellant.

Later, the Court acceded to the request of the respondent/opposite party of sending notice through special messenger.

The report of the special messenger before the Court was that the appellant and one Purushottam Bhagat, who was also a party in the proceeding, refused to accept the notice. To further ensure the appearance of the parties, the Court issued a Gazette notification to notice the appellant and also directed for Dasti notice to be served to the appellant.

The order-sheet of the Court dated 08.04.2011 and 21.04.2011 suggest that all such requirements were fulfilled but the appellant never appeared before the Court.

Notwithstanding the aforesaid facts, the Family Court proceeded to hear the divorce petition in which aforesaid Purushottam Bhagat participated. Though he has denied the allegation of the respondent/husband that the appellant had been living in adulterous relationship with him but on the issue of desertion, which was a specific issue framed by the Family Court,



it was found that for all these years, the appellant had deserted the husband without any rhyme or reason.

Dr. Sanjay Kumar Singh further intimates this Court that out of the wedlock, two children were born who are now adults and are still being maintained by the respondent/husband.

Mr. Sharda Nand Mishra has not been able to make out any case for condonation of delay of three years and seven months in preferring this miscellaneous appeal.

The petition is dismissed on ground of limitation.

(Ashutosh Kumar, J)

(Satyavrat Verma, J)

kundan/krishna

AFR/NAFR	NAFR
CAV DATE	NA
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