

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.625 of 2019

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Randhir Kumar @ Randheer Kumar, aged about 22 years, male, S/o Sri Ram Sharan Singh, Resident of Village- Chak Daulat, P.O.- Lakhanpura, P.S.- Bakhtiarpur, Dist.- Patna.

... .. Appellant/s

Versus

Reshma Kumari @ Manju Kumari, aged about 34 years, female, D/o Late Ram Chandar Singh Yadav, Resident of Village-- Bampur, P.O.- Pandarak, P.S.- Pandarak, Dist.- Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Manish Kumar No. 13, Adv.
Mr. Rohit Kumar, Adv.
For the Respondent/s : Mr. Kumar Uday Bhanu Roy, Adv.
Mr. Binit Kumar, Adv.

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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 : 11-01-2023

Heard Mr. Manish Kumar No. 13, the learned Advocate for the appellant/husband and Mr. Kumar Uday Bhanu Roy, the learned Advocate for the respondent/wife.



2. On an application filed by the respondent/wife for restitution of conjugal rights, the Family Court, Patna had issued notice to the appellant/husband, which was never served upon him.

3. It has been urged on behalf of the appellant that even when the service report of the notice was not filed in the Court, the Court ordered for paper publication and ultimately this case was decided *ex-parte*, directing the appellant to take back the respondent and restore the conjugal relationship.

4. Mr. Manish Kumar No. 13, the learned Advocate, has contested that passing a judgment *ex-parte* in such situation was not correct. There was no service report of summons before the Court for him to have issued directions for papers publication.

5. Mr. Kumar further refers to the provisions contained in Order 5 Rule 20 of the Civil Procedure Code, which delineates the process under which, substituted service could be effected.



6. In support of the aforesaid contention, Mr. Kumar has produced for inspection of this Court the certified copy of the entire order-sheet of the Court below, which reflects that notice was directed to be issued on 10.10.2017 for which requisites were filed by the respondent by 05.01.2018. When the matter was taken up on 28.02.2018, there was no appearance of the appellant nor was there any service report. On the same day, without awaiting the service report of summons to the appellant, a direction was issued for paper publication, which, ultimately, may have been printed in the local newspapers. Nonetheless, for breach of the process as mandated under Order 5 Rule 20 CPC, the judgment ought not to be sustained and he be given an opportunity of presenting his cause before the Family Court.

7. A surprising revelation has been made by Mr. Kumar Uday Bhanu Roy, the learned Advocate for the respondent/wife, that pursuant to the judgment



impugned in the present petition, the respondent has gone back to her matrimonial home and is residing there.

8. We were, at one point of time, reluctant to pass any order in this appeal for the reason that the respondent was absolutely satisfied that the judgment has been complied with. However, the counsel for the appellant has disclosed another set of more queer facts, which cannot be adjudicated in this appeal.

9. It has been alleged that the appellant/husband was forcibly married when he was only 13 years of age, which fact, according to him, has been admitted by the respondent/wife, but only because he could not appear before the Family Court, this issue could not be brought to the fore.

10. In response to the afore-stated statement, Mr. Roy, the learned counsel for the respondent/wife submits that in fact, a suit was brought by the appellant for dissolution of marriage, which was



dismissed for non-prosecution. Against the aforesaid dismissal, the appellant had approached this Court when the matter was remitted to the Family Court with a direction to restore the suit and proceed in accordance with law. Thereafter, the case for dissolution of marriage is continuing before the Family Court in which the respondent has also appeared and has been contesting the same.

11. Under such circumstance, we deem it appropriate to set-aside the *ex-parte* judgment and remit the matter to the Family Court to allow the parties to adduce fresh set of evidence for finally coming to a conclusion.

12. The Family Court shall also consider the feasibility of merging the aforesaid petition with the petition for dissolution of marriage and decide the matter finally.

13. We order accordingly.

14. The Family Court is directed to either take



up the case individually or along with the suit for dissolution of marriage, affording all opportunities to the parties to present their cause and take a final decision without any delay.

15. However, we further direct that in case the respondent is residing in her matrimonial home, in the meantime, till the suit is finally decided, she shall not be ousted from her matrimonial home and any attempt to do that would enable the respondent to approach the Family Court for the needful.

16. The appeal stands disposed off accordingly.

(Ashutosh Kumar, J)

(Satyavrat Verma, J)

Praveen-II/Rishabh

AFR/NAFR	NAFR
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