

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.334 of 2018

=====

Diwakar Prasad Singh @ Pankaj @ Pankaj Kumar son of Dr. Ramdeo Prasad Singh, resident of Village- Maujma, P.O.- Logaon, Police Station- Sangrampur, District- Munger.

... .. Appellant/s

Versus

Sweta Kumari wife of Diwakar Prasad Singh @ Pankaj, daughter of Sri Vidya Sagar @ Vidya Sagar Singh, resident of Village- Milki Sattarpur, P.O. Amarpur, Police Station- Bhedni Chowki, District- Lakhisarai.

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Sanjeev Ranjan, Adv.

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

10 18-04-2024

In the instant appeal, the appellant has prayed relief in the following manner;

“That this miscellaneous appeal is directed against the order dated 17.01.2018 passed in Matrimonial Case No. 238 of 2016 by the learned Principal Judge, Family Court, Munger by which the divorce case has been dismissed for non-compliance of the order dated 23.06.2017 by which litigation cost and expenses were ordered to be paid to the respondent wife, which order per-se is unsustainable and illegal and liable to be set aside.”

2. The appellant has filed a petition for decree of divorce. During pendency of the Matrimonial Case No. 238 of



2016, for non- compliance of certain directions in respect of payment of litigation cost, the learned Principal Judge, Family Court, Munger dismissed the Matrimonial Case No. 238 of 2016 vide order dated 17.01.2018, which is under challenge.

3. Service of notice on the respondent was not completed.

4. The appellant was directed to take Dasti service. Dasti service was not executed since, Sweta Kumari, respondent refused to accept the Dasti service. To that effect, a supplementary affidavit has been filed on behalf of the appellant on 02.03.2024. Para-2 thereof reads as under;

“That this Supplementary Affidavit is being filed to submit and state that in compliance of the order dated 05.02.2024, the appellant had gone to serve Dasti Service to the respondent at the following address – Sweta Kumari, resident at Village- Dhankot, Post Office – Dhankot, Police Station – Rajendra Park, District – Gurugram – 122505, where the respondent is presently residing and working. The appellant had gone to serve dasti summon to the respondent Sweta Kumari in present of two local witnesses namely – Sonu Patel and Vikki Kumar who are here neighbours. The



respondent refused to accept the dasti notice nor did she permit a copy of the dasti notice being affixed on the conspicuous part of the property.”

5. In view of the supplementary affidavit filed on behalf of the appellant, we have to draw an inference that service of notice to respondent, Sweta Kumari held sufficient.

6. The learned Family Court has committed an error in dismissing the Matrimonial Case No. 238 of 2016 only for non -compliance of certain directions in respect of payment of litigation cost etc. Accordingly, the order of the learned Principal Judge, Family Court, Munger dated 17.01.2018 passed in Matrimonial Case No. 238 of 2016 stands set aside while restoring Matrimonial Case No. 238 of 2016 on the file of the Principal Judge, Family Court, Munger.

7. Accordingly, respective parties are hereby directed to appear before the Family Court, Munger on **09th of May, 2024 at 03:00 P.M.** The learned Principal Judge, Family Court, Munger is, hereby, requested to take up the Matrimonial Case No. 238 of 2016 with reference to the stage as on 17.01.2018 and proceed to conclude the case



within a period of six months from the date of receipt of this order. Respective parties are, hereby, directed to co-operate in the matter in deciding the aforementioned case.

8. It is informed that the appellant has not paid any money to the respondent- Sweta Kumari from 23.06.2017, therefore, the appellant is, hereby, directed to pay a lump-sum litigation cost quantified at Rs. 25,000/- (Twenty Five thousand rupees only). Cost shall be paid within a period of four weeks to respondent- Sweta Kumari so as to enable her to engage a counsel and prosecute the remanded case. Accordingly, the present miscellaneous appeal stands disposed of. Pending interlocutory application, if any, stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

brajesh/-

U			
---	--	--	--

