

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.113 of 2022

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Anupma Kumari W/o Sri Prabhash Kumar, D/o Late Binod Kumar Karn
Resident of H/O NO. 12, Road No. - 10, East Patel Nagar P.S. - Shastrinagar,
District- Patna At present resident of Flat No. 102, Kalash Enclave, Professor
Colony, P.S. - Shastri Nagar, District- Patna.

... .. Appellant/s

Versus

Prabhash Kumar S/O Late Someshwar Lal Flat No. 613B Lotus Apartment
New Patliputra Colony P.S. Patliputra District- Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Ranjan Kumar Sinha

For the Respondent/s : Mr.Prabhash Kumar (In Person)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 17-05-2024

The present appeal is directed against the judgment dated 25.02.2022 and decree dated 26.02.2022 passed in Matrimonial Case No. 481 of 2011 by the Court of learned Additional Principal Judge, Family Court, Patna whereby marriage between the parties has been dissolved by passing decree of divorce.

2. Being aggrieved by the judgment and decree in favour of respondent against the appellant for dissolution of marriage and it has been prayed to allow divorce in terms of counter claim under Section 23(A) and 25 read with 27 of the Hindu Marriage Act, 1955 as claimed by the appellant.



3. Briefly stated facts of the present appeal is that marriage of Anupma Kumari (appellant/wife) and Prabhash Kumar (respondent/ husband) was solemnized on 09.07.2010 according to Hindu Rites and Customs in the town of Patna. It is claimed that after marriage the appellant/wife arrived at respondent's house but she did not find any comfort and she insisted for separate accommodation. It is alleged that behavior meted out to the respondent/husband was not cordial. Respondent/husband joined his office at Mumbai after nine days of marriage but appellant did not reciprocate the same. It is asserted that appellant and her parents began to pressurize the respondent for separate accommodation. It is further alleged that father of the respondent suffered heart attack on account of undue pressure exerted by the appellant and her parents. On 20.07.2010 respondent's father was hospitalized in PMCH, Patna and for better treatment he was admitted in Max Hospital, Delhi on 27.07.2010 where Angiography and Angioplasty was done where appellant has not taken pain to ask the well being of the respondent's father. On 24.10.2010, after several requests, appellant came to join the respondent at Mumbai. It was asserted by respondent that the appellant was misbehaving and having nagging approach



over trivial matter, and she began to pressurize for separate accommodation. On 14.11.2010, respondent's elder brother started living separately on account of erratic behaviour and attitude of the appellant and appellant did not co-ordinate in handling the domestic work. On 02.04.2011 respondent's mother was hospitalized in Kurjee Holy Family Hospital, Patna and appellant, any how, became ready to go to Patna for taking care of respondent's mother but she lived for two days and went away to her father's house. On 23.05.2011 the respondent/ husband came to his house with wife/appellant. She did not behave well with respondent's family rather she became discourteous and created tense atmosphere. On 04.06.2011, she came back to her matrimonial house and on 05.06.2011 the appellant threatened the respondent to implicate in case. On 07.06.2011, she left the matrimonial home after taking all belongings including jewellery.

4. Learned counsel for the appellant submitted that learned Additional Principal Judge, Family Court, Patna has passed the judgment dated 25.02.2022 and decree dated 26.02.2022 without going through the material available on record which is not justified and legal in the eye of law. He further submitted that appellant has already filed counter



claim under Section 23 (A) and 25 read with 27 of the Hindu Marriage Act, 1955 but the learned Family Court has not adopted proper procedure for hearing the said counter claim where the appellant herself seeking divorce, permanent alimony and return of articles against the respondent and the said counter claim has not been considered and it has been dismissed without admitting the said counter claim on technical ground. He further submitted that substantial cause of justice has not been done to the appellant as she has herself claimed that torture and misbehavior was committed against her (appellant) from the respondent's side and respondent/husband himself sought divorce on the same ground in which he himself is a wrongdoer. He further submitted that Family Court has not considered said aspect and the said counter claim has been decided in a casual manner without adopting proper procedure. He further submitted that when Family Court is deciding the fate of the marriage of both parties, it is the bounden duty of the Family Court to decide each and every issue but the Family Court has not gone into the depth of the matter and dismissed the counter claim abruptly without assessing the material available on record. He further submitted that during the



course of the trial, the said counter claim has been filed and neither ample opportunity was given to the appellant for proving the said counter claim in the present case nor was any issue framed in the light of counter claim with the divorce petition which was not justified and legal for deciding the said matter, and no substantial justice can be meted out to the appellant. He has submitted that the concerned court has flouted the settled proposition of law as per guideline of the Hon'ble Supreme Court in the case of *Rajnish vs Neha and Another* that if party failed to deposit interim maintenance amount, his evidence/defence is fit to be struck off. In said divorce case, respondent/husband was directed to pay Rs.1500/- per month and Rs.30,000/- lumpsum amount as litigation cost under Section 24 of the Hindu Marriage Act filed by the appellant vide order dated 24.02.2014 and respondent/husband never complied the said order except Rs.2,50,000/- (two lakhs fifty thousand only) as per direction of the Hon'ble Supreme Court. He further submitted that the appellant has filed written statement on 21.03.2013 in which she has admitted the factum of marriage with the respondent on 09.07.2010 according to Hindu Customs and Rites. Further, she has denied the allegation of any misbehavior and



discourteous attitude against the respondent/ husband and his family members rather appellant regularly visited hospital and took proper care of her father-in-law and she has discharged her obligation. The appellant faced derogatory remarks from the respondent and his family members. She stated that she stayed at his husband's house up to 23.10.2010. Thereafter on 24.10.2010 she visited to Mumbai which is the place of working of appellant's husband. During the said period, she was tortured mentally and physically by the respondent and on 19.02.2011 respondent forcibly tried to oust the appellant from the house of the respondent in Mumbai. Further, she has also denied the allegation that she did not take care of her mother-in-law rather on 03.04.2011, appellant returned at her matrimonial house for nursing and caring of the ill mother-in-law. On 22.05.2011 on the occasion of marriage of brother-in-law (dewar) of appellant, Vikash Kumar, the respondent's family started humiliating her by comparing the ornament and articles which was received by her in-laws on the occasion of marriage of brother-in-law. On 25.05.2011, the respondent went to Mumbai at the place of posting and threatened the appellant to give divorce by saying "*Na tumko jine dunga aur na marne dunga, tumhari jindagi narak bana dunga*" and she



was not allowed to contact with the her parental family and finally on 07.06.2011, the father-in-law abused the appellant and appellant has been finally ousted from matrimonial house.

5. Respondent himself appeared in person. He submitted that learned Additional Principal Judge, Family Court, Patna has taken into account all the evidence and pleadings for deciding the matrimonial divorce petition. He further submitted that the learned trial court has also appreciated the evidence of both parties and decided all the issues which were framed by the learned Additional Principal Judge, Family Court, Patna in the given facts and circumstances of the case and the respondent has successfully proved its case that cruelty has been committed by the appellant and judgment dated 25.02.2022 and decree dated 26.02.2022 passed by learned Additional Principal Judge, Family Court, Patna is justified and legal and hence, no interference is needed. He further submitted that matrimonial discord has been arisen on account of the appellant/wife insisting the respondent/husband to live separately as appellant was not feeling well to reside with respondent's family. It is asserted by the respondent that appellant has not joined matrimonial home when respondent's father suffered



heart attack and she has not even served the respondent's mother on 02.04.2011 when she was hospitalized in Kurjee Holy Family Hospital, Patna. Further, appellant has ill treated all the respondent's family members viz., father, mother, elder brother. The respondent has faced intolerable and cumbersome situation created by the appellant which compelled him to file the divorce petition.

6. In support of present matrimonial (divorce) petition, the respondent has adduced three witnesses in his support and they are A.W. 1:- Vikash Kumar, A.W. 2:- Someshwar Lal and A.W. 3:- Prabhash Kumar (respondent himself). Besides this the respondent relied on some documentary evidence. On the other hand, the appellant has also adduced two witnesses in support of the said petition, they are O.P.W 1:- Vinod Kumar Karn and O.P.W. 2:- Anupama Kumari (appellant herself) besides this, the appellant has also relied upon some documentary evidence.

7. On the basis of pleadings of both parties, following issues have been framed:-

(I) Whether the present suit maintainable in present form?

(II) Whether the appellant/husband has valid



cause of action for filling the present petition?

(III) Whether the conduct of opposite party/wife cruel against the appellant/husband?

(IV) Whether the appellant/husband entitled for relief sought under the said petition?

(V) Whether the appellant/husband entitled for any other relief or reliefs ?

8. In the light of the given facts and circumstances of the present appeal, it is crystal clear that judgment dated 25.02.2022 and decree dated 26.02.2022 passed by learned Additional Principal Judge, Family Court, Patna against the appellant on the ground of cruelty. The contention of learned counsel for the appellant is that respondent has already filed Matrimonial Case No. 481 of 2011 and appellant has filed counter claim and the said counter claim has not been taken into account and the same has been dismissed on the basis of technical ground. It has been stated that appellant has not committed cruelty against the respondent rather respondent was himself liable for committed cruelty against the appellant.

9. It has become settled rule that no one is allowed to take advantage on his own “wrong” in terms of



section 23 A for the purpose of gaining relief of divorce but court is bound to refuse such relief if person who is seeking relief is guilty of wrong doing and in the case of ***Hirachand Srinivas Managaonkar Vs. Sunanda*** reported in ***(2001) 4 SCC 125***, the Hon'ble Supreme Court has observed that "Divorce under Section 13(1-A), held, can be granted only if conditions stipulated in Section 23(1)(a) are satisfied – Therefore, if court finds that a person is attempting to take advantage of his own "wrong", in terms of Section 23(1)(a), for the purpose of gaining the relief of divorce, the Court is bound to refuse such relief."

10. In the present case, the husband has filed the petition of divorce under Section 13(1)(i-a) of Hindu Marriage Act and simultaneously during the course of pendency of said petition, appellant/ wife has filed petition of counter claim under Section 23(A) and 25 read with 27 of the Hindu Marriage Act, 1955 and she has specifically and categorically stated that husband/respondent had committed the act of cruelty and dessertion against her and she is entitled to get relief in aforesaid counter claim and husband has lucrative job in Mumbai and she has no independent source of income and the counter claim of the appellant/ wife has been



dismissed mechanically without admission. The appellant/wife was being deprived to prove the counter claim by providing material information which is required in given facts and circumstances of the case and the contention of learned counsel for the appellant is quite obvious that the direction of the concerned court regarding the interim maintenance has already been flouted and has not been complied but the concerned court has not taken into account the non-complying attitude of the respondent/husband so as to strike of his defence or evidence of the respondent.

11. From the perusal of order sheet dated 25.09.2019, it is crystal clear that counter claim dated 09.03.2016 has been rejected broadly on two issues. Firstly, the counter claim filed on behalf of the appellant/wife has not been pressed as on 30.05.2016 after hearing the both parties, issues have been framed by the Additional Principal Judge, Family Court, Patna and record has been put up on evidence and appellant has never pressed her counter claim for admission and another reason which is cited by the Additional Principal Judge, Family Court, Patna is that when the said counter claim would be taken into account, it would be hurdle for expeditious disposal of the present divorce



petition. Both reasons cited by the Additional Principal Judge, Family Court, Patna is neither tenable nor sustainable to mitigate the substantial cause of justice for which the law is made. In this way, order passed by the Additional Principal Judge, Family Court, Patna is sketchy order which lacks sound reasoning and the substantial cause of justice cannot be evaporated by merely technical ground. In this way, order dated 25.09.2019 passed by the Additional Principal Judge, Family Court, Patna is hereby set aside.

12. For ensuring timely disposal of application seeking maintenance under all the applicable statutes viz Section 125 of Cr.P.C. permanent alimony under Hindu Marriage Act and so on and in this case the Hon'ble Supreme Court has given clear cut guideline how to determine the quantum of maintenance and objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

13. Hon'ble Supreme Court in the case of ***Rajnesh Vs. Neha and Another*** reported in ***(2021) 2 SCC***



324 has given Format how the assets and liabilities of the parties are to be submitted and the same has been provided in the format of enclosure in the last portion of judgment. In Para 134 of the judgment, it has been clearly mentioned that the copy of judgment be communicated by the Secretary General of this Court, to the Registrars of all High Courts, who would in turn circulate it to all the District Courts in the States. It shall be displayed on the website of all District Courts / Family Courts/ Courts of Judicial Magistrates for awareness and implementation. It has been clearly mentioned that Criminal Appeal No. 730 of 2022 (***Rajnesh Vs. Neha and Anr.***) has been decided on November 4, 2020 and the present Miscellaneous Appeal No. 113 of 2022 has been decided by learned Additional Principal Judge, Family Court, Patna on 25.02.2022 but learned Additional Principal Judge, Family Court, Patna has not taken into account assets and liabilities of both the parties as communicated in the observation made by the Hon'ble Supreme Court's decision ***Rajnesh vs Neha and Another (supra)***.

14. Keeping in view of the aforesaid facts and circumstances of the present case, we are not going to make any comment on the merit of the case but we are only



expressing our views that learned Additional Principal Judge, Family Court, Patna has not decided the counter claim in the similar way by providing ample opportunity to both the parties as learned Additional Principal Judge, Family Court, Patna while deciding the petition under Section 13(1)(i-a) filed by the respondent/husband, giving ample opportunities to both the parties for reaching out to the particular conclusion. In another words, said approach has not been followed by the family court while deciding the counter claim of appellant. So, moot point to decide all issues decided in the present divorce petition alongwith the counter claim which has not been decided by giving ample opportunities to both the parties before passing final order keeping in view of the guideline by Hon'ble Supreme Court in the case of ***Rajnish vs Neha and Another (supra)***.

15. There is no need to pass any order on the merit of the case as counter claim has not been decided alongwith issues as arisen from present divorce case by the learned Additional Principal Judge, Family Court, Patna. Keeping in view, the facts and reasons discussed in forgoing paragraphs, the judgment dated 25.02.2022 and decree dated 26.02.2022 passed in Matrimonial Case No. 481 of 2011



passed by the learned Additional Principal Judge, Family Court, Patna is hereby set aside and remitted back to decide counter claim alongwith issues framed by the learned Additional Principal Judge, Family Court in divorce petition. The matter is remitted back to the learned Family Court to decide the counter claim alongwith issues arising in present divorce petition, on its own merit in accordance with law within a period of six months from the date of receipt/production of a copy of this judgment, after giving ample opportunity of adducing evidence and hearing to the respective parties. Parties are directed to co-operate in disposal of Matrimonial Case No. 481 of 2011.

16. The trial court records be sent back to the learned trial court forthwith.

17. Pending I.A.'s, if any stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

amitkumar/
alok/-

AFR/NAFR	A.F.R.
CAV DATE	02.05.2024.
Uploading Date	17.05.2024
Transmission Date	17.05.2024

