

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1199 of 2016

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Rabin Kumar Mishra @ Robin Kumar Mishra son of Late Triguna Mishra, R/o D/55, Road No.1, Park D No.3, Ashok Nagar, Ranchi Jharkhand.

... .. Appellant/s

Versus

Aarati Kumari wief of Rabin Kumar Mishra, Son of Late Triguna Mishra, R/o D/55, Road No.1, Park D No.3, Ashok Nagar, Ranchi Jharkhand. present address D/o Late Chandradeo Choubey, Quarter No.453, Gali No.1, Gandhi Park Railway Colony, Post- Samastipur, P.S.- Samastipur Nagar, District-Samastipur.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Umesh Kumar, Advocate Mr. Shubhankar Raj, Advocate Mr. Tahsin Nayyar Siddiqui, Advocate
For the Respondent/s	:	Mr.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
And
HONOURABLE MR. JUSTICE S. B. PD. SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. B. PD. SINGH)

Date : 10-12-2024

The present appeal has been filed under Section 19 of the Family Court Act, 1984 impugning the judgment and decree dated 03.05.2016 passed by learned Principal Judge, Family Court, Samastipur in Divorce Case No. 101 of 2015, whereby and whereunder the marriage between the parties were dissolved and the appellant, herein was directed to pay Rs. 10,000/- per month to the respondent till she re-married. The payment

of Rs. 10,000/- was to be made from the date of passing of the judgment and decree dated 03.05.2016.

2. The case of the respondent as per petition filed before the Family Court is that the respondent got married with the appellant on 21.4.2004 according to Hindu rites and Customs in the Railway Colony at Samastipur but after lapse of 11 years of their marriage, they were not happy in their marital life. They started living with separately and the relation as husband and wife became to be ended and in such circumstances, they were voluntarily ready to dissolve their marriage and thereafter joint petition for divorce was filed by both the parties which were allowed by the learned Principal Judge, Family Court, Samastipur in Divorce Case No. 101 of 2015 on 03.05.2016.

3. It is submitted by learned counsel for the petitioner that a joint petition for grant of divorce on mutual consent under Section 13(B) of Hindu Marriage Act was filed, which has been annexed as Annexure-1,

which clearly shows that one of the terms and conditions was that the appellant will return all the ornaments and articles which were given at the time of marriage and as one time settlement, Rs. 50,000/- was also to be given. It was clearly mentioned in the Divorce Petition that thereafter the respondent will not claim anything. The appellant has returned all the ornaments of the respondent and also paid Rs. 50,000/- to the respondent. Even then the Court below has taken a view that an order under Section 25 of the Hindu Marriage Act is to be passed for grant of permanent alimony to the respondent and passed the order directing the appellant to pay Rs. 10,000/- per month to the respondent till she re-married.

4. This Court vide order dated 01.12.2017 issued notice to the respondent. Thereafter, vide order dated 07.03.2018, fresh notices were issued to the respondent and vide order dated 26.04.2019, the notices issued to the respondent were deemed to be validly served. Again notices were issued on 02.05.2019 and

27.06.2019 to the respondent which were validly served to her but still the respondent has not bothered to appear before this Court.

5. Since the divorce petition was filed on mutual consent and the respondent had not claimed any maintenance in the aforesaid divorce case whereas the appellant claims that as per conditions of Divorce Petition, he had returned all the ornaments and articles of the respondent which were given at the time of marriage and also paid Rs. 50,000/- as one time settlement, hence, the judgment and decree dated 03.05.2016 passed by learned Principal Judge, Family Court, Samastipur in Divorce Case No. 101 of 2015 is modified to the extent that the appellant is not required to pay Rs. 10,000/- per month as maintenance to the respondent because this fact was neither pleaded nor demanded by the respondent(wife) in the joint divorce petition.

6. Accordingly, the judgment and decree dated 03.05.2016 passed by learned Principal Judge,

Family Court, Samastipur in Divorce Case No. 101 of 2015 is modified to the extent as indicated above.

7. Miscellaneous Appeal No. 1199 of 2016 stands disposed of.

(S. B. Pd. Singh, J)

(P. B. Bajanthri, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	14/11/2024
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