

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1 of 2018

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Nand Kishore Nandan @ Nand Kishore Rai @ Pappu Son of Upendra Rai,
Resident of Village- Mahisaur, P.S. Jandaha, District- Vaishali.

... .. Appellant/s

Versus

Rita Devi Daughter of Jagat Rai, Resident of Village- Bakhri Barari, P.S.
Rajapakar, District- Vaishali.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Nachiketa Jha, Adv.

For the Respondent/s : Mr.Manish Chandra Gandhi, Adv.

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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 : 10-07-2024

The present appeal is directed against the judgment dated 23.09.2017 and decree dated 07.10.2017 passed by learned Principal Judge, Family Court, Vaishali at Hajipur in Divorce Case No. 39 of 2011, whereby and whereunder the application filed by the appellant-husband under Section 13 of the Hindu Marriage Act, 1955 has been dismissed.

2. Briefly stated facts of the present case is that appellant/petitioner married with opposite party/ respondent on 20.04.2007 at the paternal house of the respondent. It is stated in the petition that respondent was feeble minded since childhood and her behaviour was not normal as she used to attack someone and the said unusual conduct made by the respondent was not intimated to the father of the appellant and marriage of



respondent was solemnized with appellant by concealing the aforesaid fact. After marriage, the respondent/wife (Rita Devi) came to the house of the appellant and her behaviour was witnessed by appellant's side which was not normal. She started behaving in a strange way. Her behaviour was so unusual that she was presumed to be in intoxicated condition. Her strange behaviour was intimated to the father of the respondent who came there and after administering medicine, she became normal. It is stated that brother and father gave medicine to respondent and when query was made regarding the medicine taken by the respondent from the chemist, it is found that she was suffering from mental illness. It is further stated that respondent was taken by her father. On 20.04.2010, respondent was dropped at the house of the appellant. The appellant started treatment of respondent but her condition did not improve. On 06.03.2011, father and two brothers of respondent came to the house of the appellant and on 07.03.2011 they took away respondent and her jewellery and clothes. It is further averred that appellant remained mentally as well as physically worried due to lunatic behaviour of the respondent. It is further stated that no child has taken birth despite lapse of four years of marriage and appellant is facing danger of his life on account of



cruel and lunatic behaviour of respondent.

3. Pursuant to the notice, respondent appeared and Court has taken effort for amicable settlement between both the parties but of no avail.

4. Respondent had filed written statement denying all the allegations regarding her mental condition. It has been stated that appellant has remarried with one Rinki Kumari and leading his conjugal life with her. It has been denied that behaviour of respondent is aggressive and she is suffering from madness. It has also been specifically denied that respondent was treated by any Neurologist. It has been submitted that on account of non fulfillment of demand of Alto Car, respondent was tortured in her matrimonial home and her husband solemnized marriage with Rinki Kumari. It has also been submitted that divorce case has been filed by the appellant on fabricated documents which is fit to be dismissed.

5. Learned counsel for the appellant submitted that the Family Court failed to appreciate the evidences of the witnesses produced on behalf of the appellant. Learned counsel further submitted that the Family Court did not examine the documentary evidence produced by the appellant meticulously. Learned counsel further submitted that Family Court did not



examine the genuineness of the document written by father of the respondent/opposite party. He further submitted that Family Court ignored the medical report produced on behalf of the appellant and all the evidences produced by the appellant categorically stated that respondent is a mental case.

6. Learned counsel for the respondent submitted that respondent intends to reside with the appellant. Learned counsel further submitted that appellant has failed to prove the case on the basis of material available on record that respondent is mentally derailed. Learned counsel further submitted that there is nothing on record which entails that she is suffering from mental illness and she has categorically and specifically denied in the written statement as well as in her evidence and there is no occasion to prove the mental illness of the respondent on the basis of material available on record. Learned counsel for the respondent submitted counter affidavit and in para-7 of the counter affidavit it has been averred that the appellant has to pay outstanding amount of Rs. 2,47,000/- as arrears of maintenance to the respondent but his conduct can well be witnessed when he himself is not paying the arrears of maintenance to the respondent and hence, he is not entitled for any relief as appellant himself is at his own fault. Learned



counsel further submitted that judgment and decree passed by the learned Principal Judge, Family Court is justified and legal and hence, no interference is required.

7. On behalf of the appellant, five witnesses have been examined. They are PW-1/Anil Kumar Arya, PW-2/Ashok Kumar, PW-3/Vijay Das, PW-4/Nand Kishore Nandan, who is appellant himself and PW-5/ Upendra Rai (father of the appellant). The appellant has also relied upon certain documents which stands marked as Ext. 1, Ext. 2 and Ext. 3. On the other hand, respondent has also examined five witnesses. They are OPW-1/Rita Devi who is respondent herself, OPW-2/Phuljhari Devi, OPW-3/Manoj Rai, OPW-4/Arjun Rai and OPW-5/Shyam Babu Rai. Thereafter, Court dismissed the divorce petition filed by the appellant. Being aggrieved with the said order, the appellant has preferred the present miscellaneous appeal.

8. In the light of given facts and circumstances of the case, the question arises:-

Whether the appellant has proved the case that respondent has been suffering from mental disorder of such a kind and to such an extent that the appellant cannot reasonably be expected to live with the respondent or not ?

9. It is necessary to analyze the evidence



adduced by PW-4, who is appellant himself. During course of examination he has admitted the factum of marriage. He further admitted that after marriage respondent continued to live with him as wife and since beginning, she made unusual behaviour like commission of suicide by setting herself on fire, jumping from roof, going outside from house etc. He further stated that respondent-wife lived in her father's house since 2011 and refused to join the appellant and appellant himself admitted that he never filed petition for restitution of conjugal rights and categorically stated that he does not want to live with respondent-wife. He sought divorce from his wife and stated that respondent is suffering from mental illness and he got her treatment from Dr. Vinay Karak, Patna. On the court question he has stated that usually respondent maintained normal behaviour.

10. PW-1, PW-2 and PW-3 have supported the facts as stated by PW-4 regarding the allegation of mental sickness of respondent. Neither PW-1 nor PW-2 have deposed date and time of abnormal behaviour of the respondent. PW-3 was also stated that her mind is not normal.

11. PW-5, who is father of the appellant, stated that respondent was treated by Dr. Vinay Karak from 2008 to 2011. He further stated that father of the respondent put



signature on Ekrarnama in which it was stated that respondent is feeble minded and the said document was admitted with objection. During course of cross-examination, PW-5 stated that respondent used to come at his house for three years and he admitted that doctor did not tell regarding the disease of respondent and he could not produce Dr. Vinay Karak for evidence. He stated that agreement which he submitted indicates him and father of respondent as a party and said agreement was prepared behind his back and he did not sign over the said document. PW-5 was unable to produce doctor as a witness to prove the allegation of mental illness and in agreement appellant's father and respondent's father were shown as a party but the said agreement did not bear the signature of appellant's father as he admitted during cross-examination.

12. OPW-1/Rita Devi is respondent herself. She has admitted the factum of marriage. She denied all the allegations made against her. Other witnesses have supported the fact that appellant performed second marriage with another lady and lived with her. Respondent herself has stated that appellant wanted to remove her from the path of life as appellant himself performed second marriage.

13. From perusal of the record moot question is:-



Whether the respondent is suffering from mental disorder of such a kind and to such an extent that the appellant cannot reasonably be expected to live with the respondent or not ?

14. From perusal of evidence adduced by the appellant and others, it is clear that they have not proved the mental illness of the respondent as the doctor who is treating the respondent has not been examined. One agreement has been submitted on behalf of the appellant which stands marked as Exhibit-1. Exhibit-1 has not been proved by the appellant as he is not party to the said agreement and PW-5 has himself stated that said document is not prepared before him rather it was prepared behind his back and he is not party to the said document and party to the said document has already denied the said allegation. Exhibit-2 is medical prescription of doctor but author of the said document is not examined and in absence of non-examination of author of said document, the same has no evidentiary value in the eye of law. Exhibit-3 is medical report which is not authenticated document and author of the said document has also not been examined which has no evidentiary value in the eye of law. In this way, all the documentary exhibits have no evidentiary value in the eye of law to prove the mental disorder of the respondent which is alleged by the appellant in



the divorce petition.

15. The only ground claimed by the appellant-husband is that the wife is of unsound mind. The prescription of Dr. Vinay Karak, Neurologist and medical report relied upon by the appellant has not been proved. Moreover, the medical report (Exhibit-3) does not suggest any abnormality.

16. In the light of discussions made above, relevant statutory provision as mentioned in Section 13(1)(iii) of the Hindu Marriage Act, 1955 which reads as under:-

"13. Divorce-(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent."

17. The Hon'ble Supreme Court in the case of **Ram Narain Gupta vs. Smt. Rameshwari Gupta** reported in (1988) 4 SCC 247 held as under:-

Section 13(1)(iii) of the



Hindu Marriage Act, 1955 does not make the mere existence of a mental disorder of any degree sufficient in law to justify the dissolution of a marriage. The context in which the ideas of unsoundness of 'mind' and 'mental disorder' occur in the section as grounds for dissolution of a marriage, require the assessment of the degree of the 'mental disorder'. Its degree must be such that the spouse seeking relief cannot reasonably be expected to live with the other. All mental abnormalities are not recognised as grounds for grant of decree.

In the judgment cited above, the Hon'ble Supreme Court cited the decision of Calcutta High Court in ***Smt. Rita Roy v. Sitesh Chandra*** reported in AIR 1982 Cal 138 in which the Division Bench of the Calcutta High Court observed as under:-

..... each case of schizophrenia has to be considered on its own merits.....

..... According to the aforesaid clause (iii), two elements are necessary to get a decree. The party concerned must be of unsound mind or intermittently suffering from schizophrenia or mental disorder. At the same time that disease must be of such a kind and of such an extent that the other party cannot reasonably be expected to live with her. So only



one element of that clause is insufficient to grant a decree.

18. The Hon'ble Supreme Court in the case of ***Kollam Chandra Sekhar vs. Kollam Padma Latha*** reported in (2014) 1 SCC 225 has reiterated the same principle as discussed in ***Ram Narain Gupta vs. Smt. Rameshwari Gupta*** (cited supra).

19. In the present case, the appellant has made bald allegation in the divorce petition that respondent is suffering from mental illness and her behaviour is not normal but he has failed to adduce any documentary piece of paper authenticated by the doctor. The appellant did not produce the evidence of the doctor who is treating mental illness of the respondent. In this way, all the allegation made by the appellant in the divorce petition lacks ingredients of Section 13(1)(iii) of the Hindu Marriage Act, 1955. From perusal of evidence available on record, it is evident that marriage took place in the year 2007 and appellant himself made allegation that her behaviour is unusual and she is suffering from mental sickness as since the beginning, she made unusual behaviour like commission of suicide by setting herself on fire, jumping from roof, going outside from house etc. but it is admitted fact that marriage took place in the year 2007 and divorce petition has



been filed after gap of three years despite being, he is well aware of the fact that she is suffering from such kind of mental illness. The appellant can approach the court much earlier than filing of divorce petition in the year 2011. The appellant has made allegation that respondent has already left his house but he has not taken any pain to bring his wife and he has admitted that he himself is not ready to live with his wife. In this way, appellant himself is on fault in not co-operating with his wife and he has developed a well calculated device to overcome his own fault where respondent-wife and other witnesses have stated that appellant himself has settled a second marriage and appellant himself has made a safe path to leave the respondent-wife by seeking divorce on the ground of mental illness which is beyond any stretch of imagination. In the light of the fact that the appellant himself lived with respondent-wife not less than three years in similar situation but after living three years he takes defence that since the initial date of conjugal life behaviour of wife was very unusual and appellant is not in a position to live with his wife as she is suffering from mental illness of such a kind that he cannot live with her. The appellant himself has not proved how his wife is treated. He has not proved how the treatment is rendered to his wife and how many



years treatment is given to his wife and the treatment of his wife is curable or not. He has not produced any document authenticated by the doctor that respondent is suffering from such a kind of mental illness that same cannot be curable. Author of the medical prescription as well as report has also not been examined. In this way, appellant has not proved the case against the respondent regarding her lunatic behaviour along with aggressive conduct towards the appellant and his parents.

20. On all counts keeping in view the discussions made in foregoing paragraphs, we find that there is no merit in the present appeal warranting any interference in the impugned judgment. The Family Court has rightly dismissed the matrimonial case of the appellant seeking divorce. The present miscellaneous appeal is dismissed accordingly, affirming the impugned judgment passed by the Family Court.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

shahzad/-

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