

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.754 of 2019

Vivek Prakash, S/o Shri Om Prakash Chaturvedi, R/o Village-Fakhrabad, P.O. Fakhrabad, P.S.-Kudra, District-Kaimur at Bhabhua.

... .. Appellant/s

Versus

Mandakini Prakash, W/o Shri Vivek Prakash, D/o Dr. Ram Prabha Ojha, R/o Presently residing at -House No. M-12 B-5, Gangotri Vihar, Nagwa, P.S.-Lanka, District-Varanasi, Uttar Pradesh.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Awadhesh Kumar, Adv.

For the Respondent/s : Mr.Prince Kumar Mishra, Adv.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 23-09-2024

Re : I.A. No. 01 of 2024

1. Heard I.A. No. 01 of 2024 for condonation of delay. There is delay of 28 days in filing M.A. No. 754 of 2029 .

2. For the reasons stated in the application read with the affidavit, delay of 28 days in filing M.A. No. 754 of 2019 stands condoned.

3. Accordingly, I.A. No. 02 of 2024 stands allowed.

Re : M.A. No. 754 of 2019

4. With consent of learned counsels for the parties,



M.A. No. 754 of 2019 is taken up for final disposal.

5. The present appeal has been directed against the judgment and decree dated 27.07.2019 and 03.08.2019 respectively passed by Principal Judge, Family Court, Bhabhua, Kaimur in Matrimonial Case No. 225 of 2014, whereby application of the appellant filed under section 13 of the Hindu Marriage Act has been dismissed.

6. Briefly stated, the fact of the appellant's case is that marriage of appellant and respondent was solemnized on 20.05.2009 as per Hindu customs and rights. It is asserted that respondent came to her sasural at Fakhrabad though the respondent had certain objection regarding standard of living of the appellant's family. Appellant began to keep the respondent together at Chitranjan, the place of posting of appellant. The appellant is said to have made several allegations in which it is averred that respondent was having illicit relation with one Vikas Kumar who is said to be her boy-friend. It is also stated that respondent is said to have moved around with constables and used to leave for marketing and shopping without informing the appellant. When the said conduct was forbidden, respondent used to behave in cruel manner and appellant used to tolerate aforesaid cruelty, hoping that respondent would improve herself



with the span of time. Respondent is said to have liking for unnatural physical relationship and abnormal sexual behaviour and she used to watch blue film. Appellant has asserted that in the year 2014 respondent filed Cases No. 209 of 2014 against the appellant and his well wishers in Banaras. She has also filed Complaint Case No. 651 of 2014 and Maintenance Case No. 37 of 2014 and complaint before the Commandant, Chitaranjan Locomotive Works and other complaints. It has also been alleged that appellant was being assaulted by respondent and respondent's father and brother. It has been averred that after birth of second child Palak in June, 2012 more than two years have spent depriving the appellant from cohabitation intentionally and appellant was put in depression by the cruel behaviour and aggressive attitude of respondent. It has been alleged that respondent and her father and brother abused the appellant's parents. She lived at the Maika (parental house) in Banaras on several special occasions and appellant was being humiliated and abused by the family members of the respondent. The respondent has very cleverly, on basis of pre-planning, has taken away all the clothes and items from matrimonial home and she wants to live arbitrary life. The appellant has filed no other way rather to file the divorce case



for spending remaining life liberating himself from the arbitrary conduct of respondent. The last cause of action arose on 17.12.2014 when appellant denied to join the matrimonial home.

7. The respondent filed written statement in which she has admitted the factum of marriage and both after marriage began to lead conjugal life. All the allegations made by the appellant has been denied by the respondent and she has admitted that she has filed complaint case as well as maintenance case and she has also put her grievance before the Commandant, Chitaranjan Locomotive Works. She has further stated that appellant took away the daughter by force and ousted the respondent from matrimonial home after assaulting her. She made allegation that Rs. 3 lakh has been made as pre-condition to keep the respondent as wife. She has made allegation that appellant and his family members physically and mentally harassed her and appellant created a situation for respondent either to commit suicide or give divorce to the appellant. Finally, on 25.05.2014 she was forced to leave the matrimonial home after being assaulted and they took away the elder daughter. She has two daughters namely, Pallavi and Palak. Now, the respondent has been residing at her father's house at



Banaras and she has not any means to maintain herself and her daughter.

8. On the basis of the pleading made by the parties, following issues have been framed by the Principal Judge, Family Court, Bhabhua, Kaimur :-

- i) Whether suit as framed is maintainable ?*
- ii) Whether the respondent wife is a lady of easy virtue ?*
- iii) Whether the respondent wife used to assault her husband by herself and also with the help of her boy friend ?*
- iv) Whether the respondent wife is in habit of promiscuous sexual intercourse ?*
- v) Whether the respondent wife was found wandering with her boy friend and other police constables ?*
- vi) Whether the respondent wife leads an adulterous life to have sexual intercourse with her boy friend and persons other than her husband ?*
- vii) Whether the plaintiff husband is entitled to obtain for decree of divorce on the ground as stated in divorce application ?*
- viii) Whether the plaintiff husband is entitled for any other relief or reliefs ?*

9. On behalf of appellant, two witnesses were examined in support of the divorce petition. P.W. 1 Vivek Prakash, the appellant himself and P.W.2 Om Prakash



Chaturvedi, the father of the appellant. Appellant has also relied upon certain documents which stands marked as Exhibits- 1 to 8. From the side of respondent, two witnesses were examined. O.P.W. 1 Bipin Ojha and O.P.W. 2 Mandakini Prakash, the respondent herself.

10. Learned counsel for the appellant submits that the judgment and decree passed by the concerned Court is without any basis as the concerned court has not considered the materials available on record. The concerned court while adjudicating case of the appellant for grant of divorce, framed eight issues. Out of them, five issues involved question relating to abnormal sexual behaviour while the other issues were relating to maintainability of the application. Learned counsel submits that primary allegation is that the respondent used abusive language and time and again humiliated the appellant and his family members and filed false cases against the appellant and his family members before several forums under different Acts and provisions of law since the year 2009. The concerned Court adjudicated the issue only on the aspect of charge of adultery and abnormal and cruel sexual behaviour of the respondent while the learned court failed to appreciate that cruel behaviour of the respondent towards her in-laws and her



husband was also one of the main charge. Learned court failed to appreciate that one of the primary charge against the respondent was that of having filed several cases against the appellant and his family members. Learned counsel submits that appellant had suffered a lot at the hands of respondent and her family members. In this way, *prima facie*, the case of cruelty has been made out against respondent.

11. Learned counsel for the respondent submits that the very verbatim of divorce petition is based on vague allegations as there is no specific time and date for making allegations. Appellant has made allegation of adultery as well as very conduct of respondent and her family members constituted cruelty. Appellant has also mentioned that he was tolerating every conduct of the respondent hoping she would reform herself in future. The divorce petition has been crafted only to fill up the allegation after allegation in order to suit the case for filing divorce petition. The divorce petition does not contain any specific allegations or details regarding the dates of occurrence that constitute cruelty or other incidents that would make it incompatible to live with the respondent. The allegation of adultery is just merely a bald statement. There is no material information which goes to show that respondent is said to have



illicit relation with someone. Even the appellant has given the name of a particular person, but he has neither made him party nor filed any case against that very person. There is no substantial material to prove the allegations made in the divorce petition. All the allegations are bald statements as there is no basis to substantiate the allegations made in the divorce petition. Even appellant has stated that cases have been filed against the appellant but there is no description of the same in the plaint and it is a settled law that no one can go beyond the pleadings. The appellant has not quoted any single circumstance with regard to specific date, time and place of occurrence in entire divorce petition except on 17.12.2014 when cause of action is said to have lastly arisen when respondent denied to join the matrimonial home. The conduct of the appellant can be witnessed that in divorce petition, though, he has discussed about the second daughter but he has not mentioned the description of the first daughter. Divorce petition is merely a vague petition based on articulation of frivolous allegations.

12. In the light of the given facts and circumstances of the case, the core issue involved in the present case with regard to cruelty as well as adultery are :

i) Whether the respondent has committed cruelty against the appellant in the light of the materials



available on record or not ?

ii) Whether allegation of adultery has been made out in the light of the facts and circumstances of the present case or not ?

13. From perusal of material available on record, it transpired that second daughter took birth in the year 2012 and it is admitted by both the parties that during leading conjugal life, two daughters have taken birth and second daughter has taken birth in June, 2012. Though date of birth of first daughter has not been specifically mentioned in the divorce petition but during course of evidence both parties have stated that the second daughter took birth in June, 2012, in this way, up to June, 2012 both parties have resided together. The allegations prior to June, 2012 is without any basis and they are meaningless in light of conjugal life of both the parties. The allegations levelled after June, 2012 to 2014 are with regard to matrimonial discord which culminated into filing of divorce petition.

14. The appellant has made several allegations against the respondent with regard to cruelty and adultery. There is allegation that appellant was assaulted by the respondent and his father and brother, but he has not mentioned any specific date, time and place of the occurrence. There is allegation that



respondent is said to have illicit relation with a particular person and she is said to have liking for unnatural physical relation, but there is nothing in the pleadings with regard to date, time and place where the respondent is said to have been seen with someone. All the allegations have been made without having specific date, time and place of occurrence. In this way, all the allegations are merely bald statements without having any basis.

15. For the purpose of proving cruelty and adultery, it is necessary to quote the Hon'ble Supreme Court decision in the case of ***Dr. N.G. Dastane vs. Mrs. S. Dastane*** reported in ***AIR 1975 SC 1534*** on the ground of cruelty which is the guiding force for determining cruelty. The word "Cruelty" has been interpreted that what act constitutes cruelty, which is a ground of dissolution of marriage may be defined as willful and unjustified conduct of such a character as to cause danger to life, limb or health badly or mental or as to give rise to reasonable apprehension such a danger. Under statutory provision of Hindu Marriage Act under Section 10(1)(b) of the Act what constitute cruelty must depend upon the term of this statute, which provides:

"10. (1) Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition to the District Court praying for a decree for judicial separation on the ground that the other party—



(b) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party;”

16. In the case of **V. Bhagat vs D. Bhagat** reported in **1994 AIR 710** the concept of cruelty has been examined through referring the case of **Shobha Rani v. Madhukar Reddi** reported in **(1988) 1 SCC 105**. The word “Cruelty” has not been defined in the Hindu Marriage Act, it has been used in Section 13(1)(i-a) of the Act in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse.

17. The crux of the various decisions of the Hon’ble Supreme Court on the interpretation of the word “cruelty” is that it has to be construed and interpreted



considering the type of life the parties are accustomed to; or their economic and social conditions and their culture and human values to which they attach importance. Each case has to be decided on its own merits.

18. In this case, appellant has made several allegations which are merely bald statements. From perusal of the materials available on record, not a solitary circumstance is stated with regard to date, time and place. In this way, the allegations made by the appellant are quite vague. In light of the discussions made in the aforesaid judgment, it is crystal clear that appellant has not made out a case so as to constitute cruelty. On the basis of the materials available on record, it is crystal clear that marriage between the parties took place on 20.05.2009 and up to the year 2012 birth of two children have taken place. In between the year 2012 to 2014, no description has been made with regard to date, time and place of the occurrence as to how the respondent has decided not to join after a particular date on 17.12.2014. On the other hand, respondent has stated that she was forced to leave the matrimonial home and was ousted from the matrimonial home and her elder daughter has been taken away by force and she was residing at her father's house along with the child. She has reason not to reside at the matrimonial



home as she has been driven out from the matrimonial home. Insofar as appellant's allegation regarding cruelty that appellant and his family members were being abused, the appellant has not made any specific circumstance upon which date, time and place, the appellant was being abused and assaulted by respondent and her family members. In this way, allegations regarding cruelty are purely a premeditated story just to suit the divorce case.

19. In the present case, we are assessing the fact of the present case upon the touch stone of ground of cruelty. We do not find any solitary circumstance, where it is found that the appellant has proved the case where cruelty is constituted in light of statutory provision as mentioned above. In daily life numerous incidents have taken place but all cannot be taken into account, which is reasonably wear and tear of married life, which can be ignored.

20. So far as the ground of adultery is concerned, appellant has neither made party any person against whom allegation of adultery is made. In the light of aforesaid fact, allegation of adultery has been made without any basis which can be put into the category of unsubstantiated allegation. In absence of specific date, time and place of occurrence, how the



allegations made by appellant can be substantiated against respondent. In this way, allegations made by the appellant are quite vague and without any basis. So far as allegations made with regard to adultery and unnatural behaviour, the appellant himself has admitted that during course of leading conjugal life, second daughter has taken birth. Birth of two children reflects how both parties are leading their conjugal life. The allegation made by the appellant-husband is calculated device to settle the score over the respondent-wife by making vague and purposive allegations.

21. Now, the question is whether the factual aspect, which has not been raised in the pleadings of the divorce petition but at later stage while adducing evidence it has been added by the appellant that he is the eye witness of the alleged occurrence regarding adultery, said added version can be taken into account or not ?

22. In the light of various judicial pronouncement, it is settled principle of law that the evidence adduced beyond the pleadings is liable to be rejected and cannot be considered for grant of relief as prayed for by the appellant.

23. Hon'ble Supreme Court in para 12 of *National Textile Corporation Ltd. Vs. Nareshkumar Badrikumar Jagad & Ors.* as reported in (2011) 12 SCC 695



after referring to *Trojan & Co. Vs. Nagappa Chettiar* as reported in *AIR 1953 SC 235*, *State of Maharashtra Vs. Hindustan Construction Co. Ltd.* as reported in *(2010) 4 SCC 518* and *Kalyan Singh Chouhan Vs. C.P. Joshi* as reported in *(2011) 11 SCC 786*, observed that pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial. Therefore, the pleadings are more of help to the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It has been further observed that as a settled legal proposition, relief not founded on the pleadings should not be granted. A decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ.

24. In *Prakash Rattan Lal Vs. Mankey Ram* as reported in *ILR (2010)III Delhi 315*, Hon'ble Delhi High Court has referred to *Ram Sarup Gupta by LRs Vs. Bishun Narain Inter College* as reported in *(1987) 2 SCC 555* and *Harihar Prasad Singh Vs. Balmiki Prasad Singh*, as reported in *(1975) 1 SCC 212* and observed in para 4 of the judgment that the sole



purpose of pleadings is to bind the parties to a stand. When the plaintiff makes certain allegations, the defendant is supposed to disclose his defence to each and every allegation specifically and state true facts to the court and once the facts are stated by both the parties, the court has to frame issues and ask the parties to lead evidence. It is settled law that the parties can lead evidence limited to their pleadings and parties while leading evidence cannot travel beyond pleadings. If the parties are allowed to lead evidence beyond pleadings then the sacrosanctity of pleadings comes to an end and the entire purpose of filing pleadings also stand defeated. The other purpose behind this is that no party can be taken by surprise and new facts cannot be brought through evidence which have not been stated by the defendant in the written statement. The law provides a procedure for amendment of the pleadings and if there are any new facts which the party wanted to bring on record, the party can amend pleadings, but without amendment of pleadings, a party cannot be allowed to lead evidence beyond pleadings.

25. Hon'ble Supreme Court in para 12 of *Bachhaj Nahar Vs. Nilima Mandal & Anr.* as reported in (2008) 17 SCC 491 has also observed that the object and purpose of pleadings and issues is to ensure that the litigants



come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. It has been further observed that the Hon'ble Apex Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take. Hon'ble Supreme Court further held in para 10 of the judgment as under:-

“10. The High Court, in this case, in its obvious zeal to cut delay and hardship that may ensue by relegating the plaintiffs to one more round of litigation, has rendered a judgment which violates several fundamental rules of civil procedure. The rules breached are:

(i) No amount of evidence can be looked into, upon a plea which was never put forward in the pleadings. A question which did arise from the pleadings and which was not the subject-matter of an



issue, cannot be decided by the court.

(ii) A court cannot make out a case not pleaded. The court should confine its decision to the question raised in pleadings. Nor can it grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint.

(iii) A factual issue cannot be raised or considered for the first time in a second appeal.”

26. Hon’ble Supreme Court in para 6 of ***Ram Sarup Gupta case (supra)*** has observed that it is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it.

27. From perusal of the divorce petition, there is no averment made that the appellant himself is an eye witness of the occurrence with regard to adultery, but during evidence, in paragraph 39 of the cross-examination, he has stated that on a specific date on 16.06.2009 he is the eye witness of adultery. In the light of discussion made above and the observations made by the Hon’ble Supreme Court, the said evidence is beyond the



pleadings and is rejected.

28. On the basis of material available on record, unsubstantiated allegation of adultery has been made against the wife and the person against whom adultery is made has not been made party by appellant clearly reflects that appellant himself is a wrong doer who has given the evidence which finds no place in the pleadings. There is no solitary circumstance referred in the pleadings with regard to date, time and place of occurrence.

29. From perusal of the material available on record, it is clear that out of the wedlock, birth of two children took place and there is difference of 2 years in between the birth of first child and the second child. The second child took birth in June, 2012.

30. On the other hand, the respondent-wife has stated that she is ready to live with her husband and she is ready to serve the appellant and his father and mother. She has stated that she has two children; elder one is aged 9 years and the younger one is aged 7 years. She has denied any allegation of adultery or any allegation of unnatural sex. She has denied all the allegation made by the appellant-husband. During cross-examination, she has stated that she did not know about unnatural sexual behaviour and when the specific question was



asked, she started weeping but did not reply.

31. On the basis of material available on record, it has been transpired that there is a description of last cause of action arose on 17.12 2014, but he has not mentioned with regard to the circumstance which compelled the respondent-wife not to join the matrimonial home. Prior to that, unsubstantiated allegation of adultery with a particular person or other allegation was made without specifying date, time and place of occurrence.

32. In the divorce petition, only the case number and year has been mentioned in respect of cases of maintenance and other cases which have been filed by the respondent. Appellant has not placed the details in the divorce petition as to how false and frivolous cases have been filed by the respondent against the appellant.

33. From the material available on record, it is crystal clear that both parties have led conjugal life and two children took birth out of the wedlock of both the parties and respondent is still ready to live with the husband and there is nothing on record which goes to show that appellant has taken any positive step for restitution of conjugal rights. Even he has not taken any step for visitation right for the child who is



residing with the mother. He has not mentioned any description regarding his first child in his plaint.

34. The appellant has taken the ground that cases which have been filed against him is also a ground of cruelty, but these cases have not been discussed elaborately in his pleading with regard to relevant facts and circumstances which led to the filing of such cases against him. But factual aspect is that when respondent-wife has denied all the allegations made by the appellant and is ready to live and serve the appellant and his father and mother and the appellant himself wants to escape the liability of being a husband, respondent-wife has no remedy than to put her grievances before the appropriate authority. In that situation, the contention of the appellant-husband is not tenable and he cannot take the defence that the remedial measures taken by the wife is the wrong step against the appellant.

35. In the present case, respondent-wife has stated that she is ready to join the matrimonial home and she is ready to serve the appellant and his father and mother. She has admitted regarding birth of two children and there is gap of 2 years between the birth of two children and the said evidence is corroborated by the appellant himself. Both have resided



together and led conjugal life and from the wedlock of both two children took birth. Appellant himself has not specifically mentioned regarding birth of first child in his pleadings. All the allegations made by the appellant is without any specific date, time and place of occurrence and the person, against whom allegation of adultery has been made, has not been made party to the divorce proceeding.

36. On the basis of material available on record, we find all the allegations made by the appellant are merely bald statement just to escape from the liability of being a husband and the respondent-wife herself is ready to join the matrimonial home, then, the cause of action, as asserted by the appellant that wife finally refused to join the matrimonial home, is totally without having any basis. The appellant himself has not made any specific averment regarding the date, time and place of occurrence which compelled the appellant to file divorce petition. His divorce petition is devoid of any solitary circumstance with regard to date, time and place of the occurrence.

37. On all counts keeping in view discussion made in foregoing paragraphs, we find that there is no merit in the present appeal warranting interference in the impugned



judgment. The Family Court has rightly dismissed the matrimonial case of appellant seeking divorce. The present appeal is dismissed accordingly, affirming the impugned judgment and decree.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

mcv/-

AFR/NAFR	AFR
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