

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.23 of 2024

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Kanchan Prabha D/o Kamal Kishore Lalit, W/o Amit Kumar Sinha, Resident of Flat No. 302, Road No. 1, Magistrate Colony, P.S. Rajiv Nagar, District-Patna.

... .. Appellant/s

Versus

Amit Kumar Sinha S/o Late Rajendra Prasad, At present resident of Mohalla Old Bus Stand Bank, P.s. Banka, District-Banka.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjan Kumar Sinha, Advocate
For the Respondent/s : None

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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 : 17-01-2025

The present appeal has been filed under Section 19(1) of the Family Court Act, 1984 impugning the judgment dated 03.10.2023 passed by learned Additional Principal Judge, Family Court, Patna in Matrimonial Case No. 338 of 2019, whereby the petition, filed by the appellant-wife to nullify the marriage with the respondent-husband solemnized on 23.08.2018, has been dismissed.

2. The case of the appellant-wife as per the petition filed before the Family Court is that the appellant-

wife and respondent-husband both are divorcee. The appellant-wife was earlier married with one Abhishek Kumar but due to cruel attitude of her husband, the appellant-wife took divorce from Abhishek Kumar on mutual consent on 11.08.2015 in Matrimonial Case No. 351 of 2012. The respondent-husband had also married with one Sweta Kumari but their marriage also could not succeed and they part-ways on 09.12.2015 by means of decree of divorce by the Family Court, Jehanabad in Divorce Case No. 30 of 2014. The marriage of the appellant-wife with the respondent-husband was solemnized as per Hindu rites and rituals on 23.08.2018 in presence of relatives and well wishers of both sides. Before marriage, the respondent-husband projected himself as a Journalist working as Bureau Chief in 24 Channel but after marriage, the appellant-wife came to know that respondent-husband was unemployed. The respondent-husband, after passing some days, started brutally assaulting the appellant-wife. During living period

with the respondent-husband, the appellant-wife found that respondent-husband is much cruel and of eccentric mind. The appellant-wife also came to know that after divorce with his ex-wife-Sweta Sinha, he had married again with one Lovely Sinha, daughter of Rakesh Sinha and this fact was kept concealed from the appellant-wife before marrying with her. The appellant-wife also found that respondent-husband is suffering from chronic Tuberculosis since 2015 but this fact was also concealed from the respondent-husband at the time of marriage. It is further averred that marriage with the appellant-wife could not be consummated due to inability of the respondent-husband.

3. After filing of the present suit, summons/notices were issued by the Court to the respondent-husband, but he did not appear. Hence, learned Principal Judge, Family Court decided to proceed *ex-parte*.

4. In order to prove her case, the appellant has

adduced oral as well as documentary evidence during the course of the proceedings. During trial, the appellant-wife has produced and examined two witnesses namely Kanchan Prabha (*P.W. 1*), appellant-wife herself and Kamal Kishore Lalit (*P.W. 2*) before the Family Court in support of her averment made in the petition. The appellant-wife has also produced the documentary evidences i.e. Informatory Petition No. 3737 of 2016 (*Ext-1*), Medical Prescription of respondent-husband (*Ext-2*), Advertisement published by Editor Manav Sewa Adhikar (*Ext-3*), Marriage receipt issued by Shiv Mandir, B.M.P, Patna (*Ext-4*), Joint Photographs of appellant-wife and respondent-husband (*Ext-5*).

5. This Court had issued notice to the respondent-husband and notices were validly served to the respondent-husband but the respondent-husband choose not to appear before this Court to contest his case. The records of the learned Court below also suggests that respondent-husband had not appeared in spite of valid

service of notice and hence the case was decided *ex-parte* against respondent-husband.

6. In view of the pleadings and the arguments advanced on behalf of the appellant as well as the evidences brought on record, the main points for determination in this appeal are as follows:-

(i) Whether the appellant is entitled to the relief sought for in her appeal.

(ii) Whether the impugned judgment of Principal Judge, Family Court, Patna is just, proper and sustainable in the eyes of law.

7. Both the above points are taken together for discussion on the basis of facts and evidences adduced on behalf of both the parties and the provision of law applicable in this case.

8. P.W. 1 Kanchan Prabha is the appellant-wife herself who has deposed that she was married with the respondent-husband on 23.08.2018 in a temple as per Hindu rights and rituals. At the time of fixing the marriage, the respondent-husband used to work as Chief

Bureau of 24 Channel. The respondent-husband said that he is mentally and physically healthy. The respondent-husband showed divorce paper with Sweta Singh, ex-wife. After marriage, the appellant-wife started living with the respondent-husband but the marriage could not be consummated due to the inability of the respondent-husband. Later, the appellant-wife came to know that respondent-husband does not have any work. The respondent-husband, thereafter started beating and abusing the appellant-wife. After five months of marriage, the appellant-wife came to know that after divorce from Sweta Sinha, the respondent-husband had also married with one Lovely Sinha, daughter of Rakesh Sinha but he had concealed this fact from the appellant-wife at the time of marriage. The appellant-wife, therefore prays to annul the marriage with respondent-husband.

9. P.W. 2 Kamal Kishore Lalit is the father of the appellant-wife who has deposed that appellant-wife was married with the respondent-husband on

23.08.2018. At the time of marriage, the respondent-husband had told that he is working as Chief Bureau of Bihar in 24 News Channel and is healthy. After marriage, the respondent-husband took the appellant-wife to a rented house in Magistrate Colony, Patna. After living there, it was found that the respondent-husband used to stay at home all day and used to ask the appellant-wife to give him money. When the appellant-wife asked why he did not go to work, the respondent-husband used to beat her up badly. The respondent-husband was mentally unstable and he was always very cruel to the appellant-wife. Meanwhile, it was found that after divorce from Sweta Sinha, the respondent-husband got married with Lovely Sinha. He has also filed Informatory Petition No. 3737 of 2016(Ext-1) in this regard. He also came to know that respondent-husband does not work with 24 Channel and he was suffering from Tuberculosis since 2015. The respondent-husband had married with the appellant-wife by hiding all the facts.

10. It is submitted by learned counsel for the appellant-wife that learned Court below has passed the order in a mechanical manner without appreciating the evidences placed on record before it. Learned Court below has failed to appreciate that at the time of marriage with the appellant-wife, the respondent-husband was already having legally married spouse one Lovely Sinha, hence, he has violated the terms as enshrined under Section 5(i) of the Hindu Marriage Act which does not permit to perform second marriage. The learned court below has failed to consider that the respondent-husband has concealed the fact that he is suffering from serious Tuberculosis and also regarding his job and in this way, he took the consent of marriage fraudulently with the appellant-wife. The marriage also could not be consummated due to inability of the respondent-husband.

11. Section 12(1)(c) of the Hindu Marriage Act describes as follows:-

“that the consent of the petitioner, or

where the consent of the guardian in marriage of the petitioner was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978), the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent”

12. We have perused the case record and considered the submissions advanced on behalf of the learned counsel for the appellant-wife. After analysis of the evidence in entirety on record as adduced by the appellant-wife, this Court finds that learned Court below has not appreciated the evidences which were produced by the appellant-wife and dismissed the petition of the appellant-wife. The learned Court below ought to have considered about the marriage of the respondent-husband with Lovely Sinha at the time of marriage with the appellant-wife. The specific claim and supporting evidence of the appellant-wife that marriage could not be

consummated is another serious cause of concern which is a cornerstone for survival of any matrimonial relationship, but that point has not been considered by learned Court below. The Court below has also not took a pain to consider the documentary evidences which were produced by the appellant-wife to prove the above pleaded facts. All those facts were required to be considered while deciding the matrimonial suit by the learned Court below.

13. All the above facts go to show that appellant-wife has proved the fact that at the time of her marriage with respondent-husband, he (respondent) was having a legally married spouse namely Lovely Sinha and marriage was not consummated owing to the inability of the respondent-husband. Nothing has come on record to controvert and rebut the above averments and evidence adduced on behalf of the appellant-wife before learned Court below as well as before this Court. So, there is no reason to disbelieve the averment and evidence adduced

on behalf of the appellant.

14. In that view of the matter, the impugned judgment dated 03.10.2023 passed by learned Additional Principal Judge, Family Court, Patna in Matrimonial Case No. 338 of 2019 is hereby set aside. The prayer of the appellant-wife to declare the marriage null and void under Section 12(1)(c) of the Hindu Marriage Act is allowed and the marriage between the appellant-wife and the respondent-husband is declared null and void.

15. Registry is directed to prepare decree of divorce accordingly.

16. Accordingly, the appeal stands allowed.

(S. B. Pd. Singh, J)

(P. B. Bajanthri, J)

Shageer/-

AFR/NAFR	AFR
CAV DATE	03/12/2024
Uploading Date	18/01/2025
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