

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.734 of 2018

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Manoj Kumar, son of Sri Devnath Prasad Yadav, resident of Babu Bazar Road
No. 10, P.S. Gardanibagh, P.O.- Anisabad, District- Patna.

... .. Appellant/s

Versus

Neeta Kumari @ Muli, wife of Manoj Kumar and daughter Hari Nandan
Yadav, resident of in front of Prakash Talkies, Sharma Gali, Khagaria, P.O.
and P.S.- Khagaria, District- Khagaria.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Harendra Kumar, Advocate
For the Respondent/s : Mr. Bharat Bhushan, Advocate

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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

Interlocutory Application No. 1 of 2019

This Interlocutory Application has been filed by the
appellant under Section 5 of the Limitation Act, 1963 for
condoning the delay of 36 days in filing the instant
Miscellaneous Appeal.

2. Considering the averments made in the
interlocutory application, sufficient cause have been
shown which prevented the appellant from filing the
Miscellaneous Appeal in time.

3. Accordingly, this interlocutory application is

allowed and the delay of 36 days in the filing of the Miscellaneous Appeal is condoned.

4. The present appeal has been filed under Section 19(1) of the Family Court Act, 1984 impugning the judgment and decree dated 05.06.2018 and 18.06.2018 respectively passed by learned Principal Judge, Family Court, Patna in Matrimonial Case No. 302 of 2011, whereby the matrimonial suit, preferred by the appellant, for a decree of divorce, on dissolution of marriage, on the ground of cruelty and desertion, has been dismissed.

5. The case of the appellant as per petition filed before the Family Court is that the marriage of the appellant with respondent was solemnized on 01.07.1995 as per Hindu Rights and Customs and out of the wedlock a daughter namely, Niharika@Tannu born on 02.12.1996 and a son namely Akash Ansh @ Babu born on 01.08.2003. The appellant and respondent lived together as husband and wife for about 7 years. It is alleged that the respondent was a quarrelsome lady and always used

to quarrel with her husband and other in-laws family members and always used to go to her parents' house without giving any information. The behaviour of the respondent was also not good towards children. In the year 2003, she went to her parental house along with children. The appellant made several attempts to bring the respondent and children to her matrimonial house but all his efforts went in vein. Ultimately, the appellant moved before the Family Court to save his physical and mental life because the appellant suffered a lot in terms of mental, physical as well as financial. The respondent deserted the appellant without reasonable cause and without the consent or against the wish of appellant. The respondent had left her matrimonial house on 4th May 2003 and since then she resides at her parental house at Khagaria. It is further alleged that only to harass the appellant, she has filed Complaint No.514/290 of 2011 on 21.04.2011 against the appellant in the Bihar State Women's Commission, Patna. It was therefore, prayed to

pass an order for the divorce in favour of the appellant.

6. In response to the summon/notice issued by the Court, respondent/O.P appeared and filed her reply/written statement.

7. It is submitted by learned counsel for the respondent that marriage of respondent with the appellant was solemnized more than 15 years ago and out of the wedlock, one daughter and one son were born. The appellant has filed the present matrimonial suit in counter blast of the complaint petition dated 21.04.2011 filed by the respondent before Bihar State Women Commission, Patna against the appellant-husband. After marriage, the respondent was tortured mentally and physically and she was restricted to meet her children. Though, she work as Neyojit Teacher at Khagaria but after taking leave in vacation, the respondent always used to come to her matrimonial house at Patna. The respondent is still living in her matrimonial house and trying to lead happy peaceful conjugal life but the attitude of the appellant-

husband, his mother and sisters did not change and they used to torture in routine affairs. During pendency of the proceeding, the appellant-husband and the respondent-wife physically appeared on 06.06.2011 before the Bihar State Women Commission, Patna and settled their dispute but after disposal of the said complaint, the appellant-husband again started torturing the respondent-wife and compelled her to leave her matrimonial house. The appellant-husband is trying to marry with another girl and the instant matrimonial suit has been filed without any reason or occasion.

8. On the basis of the rival contentions of both the parties, following issues were framed in this case by the learned Court below:-

1. Whether the case as framed is maintainable?

2. Whether the petitioner has cause of action to file this case?

3. Whether the opposite party has deserted the petitioner continuously for a period of more than two years since

preceding the presentation of the instant case?

4. Whether the petitioner was subjected to cruelty by the opposite party?

5. Whether the petitioner is entitled to relief as claimed for?

6. Whether the petitioner is entitled to any other relief or reliefs?

9. During course of trial, altogether four witnesses have been produced on behalf of the appellant which are P.W. 1 Manoj Kumar (appellant himself), P.W. 2 Sudha Mandal (sister of the appellant), P.W. 3 Pushpa Singh (sister of the appellant), P.W. 4, Niharika Yadav(daughter of appellant).

10. Apart from the above oral evidence of the witnesses, a documentary evidence has been produced on behalf of the appellant which has been marked as Exhibit - 1 which is photocopy of notice of State Women Commission.

11. On behalf of the respondent/O.P., four witnesses have been produced who are O.P.W. 1 Akash

Ansh (son of respondent), O.P.W. 2 Harinandan Prasad
Yadav (father of respondent), O.P.W. 3 Sarita Kumari,
O.P.W. 4 Neeta Kumari (respondent herself).

12. Apart from the above oral evidence, some
documentary evidences have also been exhibited on
behalf of the respondent.

Ext. A/A/1-Photographs

Ext.-B Original Fee card of Akash Ansh

Ext.-C Photocopy of PMC rent receipt

*Ext.-D Original Complain application
dated 21.04.2011.*

*Ext.-E Photocopy of notice issued by
State Women Commission.*

*Ext.-F Photocopy of proceeding of
State Women Commission.*

*Ext.-G Photocopy of receipt of
complaint dated 21.04.2011*

*Ext.-H Photocopy of report dated
24.12.2011*

*Ext.-I Photocopy of notice issued by
Women Commission.*

13. After conclusion of the trial, the learned
Principal Judge, Family Court has held that appellant has

not proved that he was subjected to cruelty at the hands of the respondent as well as deserted by the respondent and the case filed by the appellant is not maintainable and also the appellant has no valid cause of action to file the instant case. Accordingly, the Court below came to the conclusion that the appellant was not entitled for decree of divorce on the ground of cruelty as well as desertion and the suit was accordingly dismissed.

14. Thereafter, being aggrieved and dissatisfied with the aforesaid judgment and decree passed by the learned Court below in Matrimonial Case No. 302 of 2011, the present appeal has been filed by the appellant.

15. Learned counsel appearing on behalf of the appellant has submitted that the judgment and decree passed by the learned Court below is bad and appears to be mechanically passed without application of judicious mind. The respondent had deserted the appellant since 2003. The appellant made several attempts to bring back the respondent to her matrimonial house but the

respondent was not interested to continue matrimonial relationship with the appellant. The matrimonial house of the respondent is at Patna but she choose to work as *Niyojit* Teacher at Khagaria and since 2007, she has been working as a Teacher in Khagaria. The daughter of the respondent namely Niharika Yadav has deposed in her evidence that her mother's behaviour is cruel towards her father and grandfather and grandmother.

16. *Per contra*, learned counsel appearing on behalf of the respondent has submitted that the impugned judgment and decree is just legal and in accordance with law. The learned Trial Court has rightly appreciated the evidence adduced on behalf of both the parties in the right perspective and has correctly dismissed the suit for divorce filed on behalf of the appellant.

17. This Court, vide order dated 29.08.2024 had directed both the parties to file assets and liabilities statement in the form of Affidavit. The appellant has filed

supplementary affidavit in this regard but the respondent did not file any affidavit in this regard nor entered appearance thereafter.

18. In view of the rival contentions and the arguments adduced 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 his petition/appeal.

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

19. After perusal of the materials available on record and consideration of submissions made by learned counsel for the appellant as well as materials available on record, we find that appellant-husband has deposed in his evidence that respondent-wife always used to make quarrel with him and his family members but no specific instance of date has been mentioned in the plaint as well as in his evidence nor he has made any complaint before

any authority. He has also admitted in his evidence that prior to filing of this divorce case, respondent-wife has made a complaint before Bihar State Women Commission in which reconciliation proceeding took place but the record shows that appellant-husband himself refused to reconcile with the respondent-wife. The P.W. 2 Sudha Mandal, during her cross-examination at para-5 has admitted that her Babhi (respondent) never misbehaved with her as well as with her parents. At para-4 she has clearly stated that she does not want separation of appellant and respondent-wife. P.W. 4 Niharika Yadav, daughter of appellant and respondent, in her evidence at para-2 has stated that behaviour of her mother(respondent-wife) was not cordial towards her father and grandparents but at the same time, during her cross-examination at para-7, this witness has admitted that her father (appellant) has a house in which her grandparents, mother, elder father and mother all used to reside together. The O.P.W. 1 Akash Ansh who is son of

the appellant and respondent has deposed in his evidence that his father(appellant) used to visit school during parents meeting at Khagaria which shows that appellant-husband was having cordial relationship with respondent-wife. The father of the respondent-wife who has adduced his evidence as O.P.W. 2 has deposed that appellant-husband has filed this divorce case after a complaint case filed by the respondent-wife in Bihar State Women Commission in which reconciliation was made and appellant-husband was ready to live with respondent-wife. Opposite party's witness No. 3 has stated that after solemnization of marriage, opposite party, Nita has been residing at her *Sasural*. She has seen very good relation between the petitioner and opposite party. The respondent-wife herself has adduced her evidence as O.P.W. 4 and stated that her *Nanad* (sister-in-law) has kept her daughter and she was not allowed to meet with her. At para-5 she has stated that she used to prepare meal jointly for herself and her in-laws. She has filed

complaint before Bihar State Women Commission prior to filing of this divorce case. At para-17 she has admitted that her relationship with her mother-in-law and father-in-law was cordial.

20. So far as, the ground of cruelty for taking divorce is concerned, the word 'cruelty' has not been defined in specific words and language in the Hindu Marriage Act, 1955, but it is well settled position that cruelty is such of character and conduct as cause in mind of other spouse a reasonable apprehension that it will be harmful and injurious for him to live with O.P.-respondent.

21. It is observed by the Hon'ble Apex Court in leading case of Samar Ghose vs. Jaya Ghose reported in 2007 (4) SCC 511 that a sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty. More trivial

irritations, quarrel, normal wear and tear of the married live which happens in day-to-day live would not be adequate for grant of divorce on the ground of mental cruelty.

22. In this context, we are tempted to quote the golden observation made by the Hon'ble Apex Court during decision in case of Narain Ganesh Dastane vs. Sucheta Naraih Dastane reported in, AIR 1975, 1534, which are as follows:-

"One other matter which needs to be clarified is that though under Section 10(1) (b), the apprehension of the petitioner that it will be harmful or injurious to live with the other party has to be reasonable, it is wrong, except in the context of such apprehension, to import the concept of a reasonable man as known to the law of negligence of judging of matrimonial relations. Spouses are undoubtedly supposed and expected to conduct their joint venture as best as they might but it is no function of a court inquiring into a charge of cruelty to philosophise on

the modalities of married life. Some one may want to keep late hours of finish the day's work and some one may want to get up early for a morning round of golf. The court cannot apply to the habits or hobbies of these the test whether a reasonable man situated similarly will behave in a similar fashion. "The question whether the misconduct complained of constitutes cruelty and the like for divorce purposes is determined primarily by its effect upon the particular person complaining of the acts. The question is not whether the conduct would be cruel to a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse. That which may be cruel to one person may be laughed off by another, and what may not be cruel to an Individual under one set of circumstances may be extreme cruelty under another set of circumstances". The Court has to deal, not with an ideal husband and ideal wife (assuming any such exist) but with the particular man and woman before it. The

ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court for, even if they may not be able to draw their differences, their ideal attitudes may help them overlook or gloss over mutual faults and failures."

23. After going through the above entire documentary and oral evidence adduced on behalf the appellant-husband, it is crystal clear that appellant-husband has failed to prove the cruel behaviour of the respondent towards him and his family members by the strength of cogent, relevant and reliable evidence, while burden of prove of cruelty rests upon the appellant-husband of this case, because, he has sought relief of divorce on the basis of cruel behaviour of the respondent towards him. Not even single alleged incident with reference to date of alleged cruelty has been urged in the plaint before the Family Court. Furthermore, alleged certain flimsy act or omission or using some threatening and harsh words may occasionally happen in the day-to-day conjugal life of a husband and wife to retaliate the

other spouse but that cannot be a justified/sustainable ground for taking divorce. Some trifling utterance or remarks or mere threatening of one spouse to other cannot be construed as such decree of cruelty, which is legally required to a decree of divorce. The austerity of temper and behaviour, petulance of manner and harshness of language may vary from man to man born and brought up in different family background, living in different standard of life, having their quality of educational qualification and their status in society in which they live.

24. So far as ground of desertion is concerned, it has come in the evidence of the appellant-husband (PW-1) that respondent-wife, in year 2003 went to her parental house along with kids and since then appellant-husband went twice-thrice to bring back his wife but she did not return and misbehaved with him, but at the same time in para-11, during his cross-examination, he has admitted that in reconciliation proceeding at Bihar State

Women Commission, he was not ready to live with the respondent-wife and has specifically stated that he himself deserted his wife and now does not want to live with her. The respondent-wife herself in her evidence stated that she used to do service as Niyojit teacher at Khagaria but during holidays, she lives at Patna in the house of the appellant-husband. At para 19, she has stated that the appellant-husband made physical relation with her one week prior and she was cross-examined on 10.03.2016 which shows that there was marital relationship with the appellant-husband. The respondent-wife has also filed rent receipt issued by Patna Nagar Nigam which has been marked as Exhibit-C on which the father-in-law of the respondent-wife has endorsed that respondent-wife resides with them in their house. So, on the ground of desertion also, the appellant is not entitled to get any decree of divorce.

25. Thus, considering the above entire aspects of this case and evidence adduced on behalf of both the

parties, we find that appellant has failed to prove the allegation of cruelty, much less, the decree of cruel behaviour of respondent which is legally required for grant of decree of divorce under section 13(1) (ia) of the Hindu Marriage Act as also the appellant-husband has failed to prove that the respondent-wife has deserted the appellant-husband.

26. Hence, we find 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.

27. The present appeal is dismissed accordingly, affirming the impugned judgment.

(S. B. Pd. Singh, J)

(P. B. Bajanthri, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	26/11/2024
Uploading Date	18/01/2025
Transmission Date	N/A