

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.667 of 2018

Mani Bhushan Prasad @ Kanahyajee son of Late Bharat Prasad Ambastha
resident of Khagaul, Village Saidpura, P.S. and P.O. Khagaul, District Patna -
801105.

... .. Appellant

Versus

Smt. Dipti Chandra @ Daisy wife of Sri Mani Bhushan Prasad @ Kanhaijee,
daughter of Late Prakash Chandra Sinha resident of P.N.S. College Campus at
Sahkari Gali, Alahbakhapur, P.S. Alamganj, District Patna.

... .. Respondent

Appearance :

For the Appellant/s : Mr. Mani Bhushan Pd. Dwivedi, Sr. Adv
For the Respondent/s : Mr. Ajay Kumar, Adv

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 : 19-03-2025

Heard the parties.

2. The present appeal has been filed under Section 19(1) of the Family Court Act, 1984 impugning the judgment and decree dated 22.06.2018 passed by learned Principal Judge, Family Court, Patna in Matrimonial Case No. 251 of 2010, 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.

3. The case of the appellant as per petition filed

before the Family Court is that the marriage of the appellant with the respondent was solemnized as per Hindu Rites and Custom on 01.05.2001. The appellant works in Railways as Station Master. Out of the wedlock, a girl child namely Aditee was born. After marriage, the respondent went to her matrimonial house and stayed there for about 14 days and thereafter, she went along with her father at her parent's house. The appellant asked the respondent to accompany him at the place of his posting but she denied. The respondent came at the place of posting of appellant at Baroda on the occasion of *Durgapuja* along with her brother and one Vijay Kumar, who is said to be the friend of her father. The respondent, in the meanwhile, conceived and when the appellant came along with the respondent on 03.11.2001 to attend *Chhati* of daughter of his elder brother, mother of the respondent requested the appellant to have first delivery in parental house of the respondent. The appellant accepted the request and sent his wife (respondent) at her parental house and went to his place of posting at Baroda. After some times, when the appellant came to Patna to see his ailing sister, he came to know about the hospitalization of his wife(respondent). He went to the Nursing Home and found that respondent had already delivered a baby girl by cesarean

operation. The appellant gave Rs.7000/- to the mother of the respondent towards expense incurred during operation and thereafter went to the place of posting at Baroda to join his job. On several request by the appellant to the respondent to join him at his place of posting, she went there in November, 2002 but returned to her parental home at Patna in January, 2003 on the occasion of *Chhathi* ceremony of second child of elder brother of the appellant. After ceremony when the appellant told the respondent to join him where he was posted, she desired to go to her *Naihar* on the pretext to meet her relation, promising to come back but thereafter she did not accompany the appellant. The appellant made several attempt to persuade the respondent to come at Baroda along with children but she refused to live with the appellant. Ultimately, the appellant filed a case under Section 9 of the Hindu Marriage Act at Baroda bearing Case No. HMP 122/2005 on 14.03.2005 for restitution of conjugal rights but in spite of valid service of notice, the respondent never came to live with the appellant. After filing of restitution case by the appellant, respondent has filed Maintenance Case No. 53(M) of 2005 under Section 125 of the Cr.P.C. In the aforesaid case, at the time of reconciliation she pretended that she was willing to live with her husband but it was like crocodile tears because she

has been threatening the appellant that she would burn herself and implicate the appellant and his family members in criminal case and they would be sent to jail and appellant will loose his job. Ultimately, vide order dated 10.11.2009, learned Additional Principal Judge, Family Court, Patna ordered the appellant to pay Rs. 5000/- per month to the respondent and Rs. 2000/- per month to his daughter namely Shristi and till date, the appellant is continuously paying the maintenance amount fixed by Family Court. The appellant alleges that respondent has left the society of the appellant without any reasonable excuse since January, 2003 in spite of sincere effort by the appellant to bring her back and lead a happy conjugal life. The respondent is also guilty of cruelty as she does not allow the appellant to meet his daughter. It was therefore prayed that the marriage between the parties which was solemnized on 01.05.2001 be dissolved by a decree of divorce.

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

5. It is submitted by learned counsel for the respondent that marriage of respondent with the appellant was solemnized on 01.05.2001 and out of the wedlock, a

female child namely Shristi Sinha was born on 21.06.2002. Learned counsel further submits that the suit as framed is not maintainable and appellant has no valid cause of action as the instant suit has been filed against respondent on frivolous and imaginary ground as the appellant being influenced by his relatives is avoiding to live in the company of the respondent. The respondent gave birth to a female child on 21.05.2002 from the wedlock with the appellant. Now she is 22 years old and studying in B.Com (Hon.) from Bhawanipur Education Society College, Kolkata as well as coaching for chartered accountant and the respondent has been paying Rs. 3,09,000/- per year on her education. The appellant, without any rhyme or reason is avoiding to live with his legally wedded wife and daughter. The respondent is always ready to live with her husband as his legally wedded wife and to discharge all her obligations towards appellant and his family members but it is the appellant who does not want to live with the respondent. The appellant was always reluctant towards his wife (respondent) and daughter and at the time of birth of her female child, the entire cost of operation and other

expenses were borne by her mother. The respondent, on several occasions tried to go to place of posting of the appellant at Baroda and to live with him as wife but appellant never wanted the respondent to live with him at the place of his posting. Though the appellant had filed H.M.P Case No.122 of 2005 under Section 9 of the Hindu Marriage Act for restitution of conjugal rights in the court of Barodra, Gujarat. The respondent had appeared in the aforesaid case and was ready to live with appellant as his wife but the appellant denied to keep the respondent with him and withdrew H.M.P Case no.122 of 2005. Ultimately, the respondent has filed Maintenance Case No. 53(M) of 2005. At the time of reconciliation in case No. 53(M) of 2005, the appellant denied to live with the respondent. During pendency of the present appeal also, the matter was sent to the Medication Centre. In the Medication Centre, the appellant denied to live with the respondent and offered for a one time settlement but the respondent denied for settlement as she was ready to live with her husband and not in favour of decree of divorce. The respondent never left the society of the appellant on her own, rather the appellant

does not want to keep her with him. The respondent has not done any act towards the appellant which constitute cruelty or desertion, hence, appellant is not liable for a decree of divorce.

6. 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 any other relief or reliefs?

7. During course of trial, altogether two witnesses have been produced on behalf of the appellant which are P.W. 1 Mani Bhushan Prasad (appellant himself) and P.W. 2 Vidya Bhushan Prasad (brother of the appellant).

8. Apart from the above oral evidence, some

documentary evidences have also been exhibited on behalf of the appellant.

Ext.1-C.C. of Plaint of Mat Case No.122/05.

Ext.2- Photocopy of details of articles dated 25.04.2001.

Ext.3- Railway reservation ticket.

Ext.4- Photocopy of photograph of Mani Bhushan Prasad with baby.

Ext.5- Photocopy of petition dated 25.07.2005 filed by opposite party in Mat Case No. 122/05.

9. On behalf of the respondent/O.P., two witnesses have been produced who are O.P.W.-1 Dipti Chandra (respondent herself) O.P.W-2 Kamla Verma (mother of respondent).

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 Ext.A- Photocopy of C.C. of order dated 29.11.2006 passed in Mat. Case no.122/05.

11. 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 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 and the suit was accordingly dismissed.

12. Thereafter, being aggrieved and dissatisfied with the aforesaid judgment and decree passed by the learned Court of Principal Judge, Family Court in Matrimonial Case No. 251 of 2010, the present appeal has been filed by the appellant.

13. 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. Ultimately, the appellant has filed a case under

Section 9 of the Hindu Marriage Act at Baroda bearing Case No. HMP 122/2005 on 14.03.2005 for restitution of conjugal rights but in spite of valid service of notice, the respondent never came to live with the appellant. After filing of restitution case by the appellant, respondent has filed Maintenance Case No. 53(M) of 2005 under Section 125 of the Cr.P.C. In the aforesaid case, at the time of reconciliation she pretended that she was willing to live with her husband but it was like crocodile tears because she has been threatening the appellant that she would burn herself and implicate the appellant and his family members in criminal case and they would be sent to jail and appellant will loose his job. The respondent is working as Librarian in Magadh Mahila College, Gandhi Maidan, Patna and earning 6 lakhs per *annum* from her job. The respondent is also earning Rs. 50,000/- per month from rent as she is running a lodge(Hostel) in her share of parental property. The appellant is also paying Rs. 7000/- per month to the respondent and his daughter as maintenance in pursuance to the direction of the Court below in Maintenance Case No. 53(M) of 2005. The respondent has left the society of the

appellant without any reasonable excuse since January, 2003. She is only interested to get financial support from the appellant and does not want to live with the appellant.

14. *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. The respondent is always inclined and willing to live with her husband (appellant) as his legally wedded wife and to discharge all her obligations towards appellant and his family members but it is the appellant who is not ready to keep the respondent as wife.

15. In view of the rival contentions and the arguments advanced on behalf of the appellant and the respondent 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.

16. After perusal of the materials available on record and consideration of submissions made by learned counsel for the appellant and the respondent as well as materials available on record, we find that the appellant had filed HMP Case No. 122 of 2005 under Section 9 of the Hindu Marriage Act for restitution of conjugal rights at Baroda, Gujrat and at the filing of the aforesaid case, the appellant was working in Railways as Station Master at Baroda, Gujrat whereas the respondent was residing in Patna. However, as soon as the respondent received notice in restitution case, she appeared and filed her written statement, but thereafter the appellant-husband withdrew the restitution petition which itself proves that he has not filed the restitution case in right perspective with *bona fide* intention. The matter was also placed before the Mediation Center for settlement but the report of the Mediator at Flag-M suggests that appellant was not interested to live with the respondent, rather he gave a proposal of one time settlement and offered to pay Rs. 5 lakhs to the respondent and Rs.

2,50,000/- to his daughter to settle the dispute but the respondent was not ready for one time settlement as she has desired to live with her husband (appellant) and not in favour of decree of divorce. The appellant has filed the divorce petition on the ground of cruelty but in his cross-examination before learned Trial Court, the appellant has only deposed in para 19 that respondent/wife used to threaten the appellant to implicate him in a false case and sent him in jail and apart from these allegations, he has no complaint/grievance with the respondent. The aforesaid evidence of appellant in para 19 becomes falsified from his own evidence in para 20 in which he has deposed that respondent has not filed any complaint against the appellant or his family members. Further, P.W. 2 Bidya Bhushan Prasad who is elder brother of the appellant has deposed in para 23 that respondent got pregnant in Gujrat after one year of marriage. P.W. 2 in para 26 has further deposed that appellant and respondent resided in a rented house in Patna City from May, 2015 to August, 2015 and during this period, the appellant has not made any complaint against the respondent/wife, which itself proves that respondent has

not deserted the appellant since January, 2003 as alleged by the appellant. P.W. 2 in para 29 and 30 has also not alleged any bad behaviour of the respondent towards her husband (appellant) and in-laws family members. The respondent has been examined as O.P. W No. 1 who has deposed in para 2 that appellant has filed a case under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. In the aforesaid case, respondent appeared and the Court has ordered the appellant to keep the respondent as wife but there also, the appellant was not ready to keep her as wife and finally withdrew the case. In para 3, the respondent further deposed that during the pendency of the case, she lived with the appellant in a rented house which itself suggests that respondent has not deserted the appellant for a considerable period of time.

17. 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.

18. 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.

19. 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."

20. 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.

21. So far as ground of desertion is concerned, it has come in the evidence of P.W. 2(brother of the appellant) as well as respondent (O.P.W 1) that during pendency of the case also, they resided together in a rented house which itself suggests that respondent has not deserted the appellant since 2003 as claimed and pleaded by the appellant. The appellant has also admitted this fact in his cross-examination at para 16. So, on the ground of desertion also, the appellant is not entitled to get any decree of divorce.

22. 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.

23. 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.

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

(S. B. Pd. Singh, J)

(P. B. Bajanthri, J)

Shageer/-

AFR/NAFR	AFR
CAV DATE	14/11/2024
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