

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.335 of 2019

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Kanhaiya Prasad Son of Dinanath Rajak Resident of Mohalla - Bagh Bhalu
Khan, Mangal Talab, PS. Chowk Distt. Patna.

... .. Appellant/s

Versus

Bibha Kumari Wife of Kanhaiya Prasad, Daughter of Sri Vijay Kumar Rajak
Resident of Indu Sadan Satish Sarkar Lane near Dr. Veena Sinha Clinic,
Mohalla- Masakchak, P.S. Adampur, Distt. Bhagalpur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Sudish Kumar, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA)

Date : 07.04.2025

1. The present appeal has been filed for setting aside the Judgment/Order dated 26.11.2018 passed in Matrimonial (Divorce) Case No. 908 of 2011 passed by the learned Additional Principal Judge, Family Court, Patna whereby and whereunder the Divorce Petition filed by the appellant under Section 13(1) (ia) & (ib) of the Hindu Marriage Act, 1955 was rejected.

2. The factual background of the present case is that marriage between appellant-husband and respondent-wife was solemnized on 12.07.2008 according to Hindu rites and customs. The respondent-wife lived in her matrimonial home with husband and his family members for about 15 days and thereafter, she went to her parental house with her father.



Subsequently, she used to stay at her matrimonial home for few days and used to return to her parental home without informing her husband or his family members, without any satisfactory and reasonable cause. The appellant who was a Junior Telephone Officer in B.S.N.L. and posted at Begusarai offered the respondent-wife to live with him at Begusarai but she did not agree. The respondent lastly resided with the petitioner and his family members at her matrimonial home at Patna City when she visited on the eve of Holi festival in the year 2009. After residing 10 days she went to her parental home at Bhagalpur without permission or prior information to her husband or his family members and never returned back to her matrimonial home. The appellant filed a Matrimonial Case No. 409 of 2009 for restitution of conjugal rights on 25.06.2009 but despite notice to respondent she did not appear in that case and she filed a Complaint Case No. 1609 of 2009 on 17.08.2009 under Sections 323, 341 and 498A of the Indian Penal Code against the appellant and his family members, alleging assault, cruelty and demand of dowry etc. which is pending in the concerned Court at Bhagalpur. Despite all the efforts by appellant and his family members to save marriage, the respondent- wife and her parents are unwilling to reconcile. Both the parties agreed to dissolve the marriage by way of mutual consent and on 25.04.2010 the deed of agreement



cum compromise was prepared in presence of the father and the witnesses of both side and the respondent-wife received all her belongings and they have agreed to withdraw the case in the concerned Court filed earlier. Accordingly, on 26.04.2010 both parties jointly filed a Matrimonial Case No. 107 of 2010 before the Principal Judge, Bhagalpur for divorce u/s 13-B of the Hindu Marriage Act, 1955. On 05.05.2010, the conciliation took place between the parties before the said Court in which respondent-wife asked divorce only and the case was fixed for 30.10.2010 for further order but till 27.09.2011 she did not appear before the Court. The learned Court dismissed the said Matrimonial Case No. 107 of 2010 on 27.09.2011. Accordingly, the appellant filed the Matrimonial (Divorce) Case No. 908 of 2011 on 13.12.2011 for divorce under Section 13(1)(ia) & (ib) of the Hindu Marriage Act, 1955.

3. Despite the Court notice through ordinary process as well as substituted service by making publication of notice in Hindi Daily Newspaper, the respondent-wife did not appear. Accordingly, vide order dated 19.07.2013, the case was proceeded *ex-parte* hearing. The respondent-wife had not filed her written statement or adduced any evidence.

4. On behalf of appellant four witnesses have been examined to prove his case. PW-1 is Kanhaiya Prasad



(Appellant), PW-2 is Dinanath Rajak (Father of the appellant), PW-3 is Shiv Nath Rajak and PW-4 is Kishun Lal Rajak. The appellant also adduced documentary evidence as Certified copy of compromise cum agreement dated 25.04.2010 between the appellant and respondent (Exhibit 1) and certified copy of various orders passed by the learned Principal Judge, Family Court, Bhagalpur in Matrimonial Case No. 107 of 2010 (Exhibit 2).

5. The learned Additional Principal Judge, Family Court, Patna on analysis of evidence held that the appellant failed to prove his case and dismissed the Matrimonial (Divorce) Case No. 908 of 2011 vide judgment/order dated 26.11.2018.

6. It is observed in the impugned judgment/ order that both the parties, as per compromise dated 25.04.2010 are residing separately and the respondent-wife has taken all her belongings, as such, there is no propriety to continue the marriage between the parties but petitioner/ appellant has filed the divorce case on the ground of cruelty and desertion which have not been proved.

7. Despite service of notice to the respondent-wife and sufficient opportunity provided to her in this proceeding, there is no representation on behalf of the respondent-wife.



8. Heard learned counsel for the appellant-husband and perused the record.

9. Learned counsel for the appellant submitted that the respondent-wife after her marriage which was solemnized between the parties on 12.07.2008 lived only 15 days in her matrimonial home and thereafter went to her parental home and without consent of the appellant-husband started living there and refused to return to lead conjugal life with the petitioner/appellant due to which the appellant filed the Matrimonial Case No. 409 of 2009 for restitution of conjugal rights but the respondent-wife, with *malafide* intention, filed dowry torture case against the appellant and his family member. He further submitted that in a troubled marriage there were pending criminal matters and matrimonial proceedings. Eventually, divorce by mutual consent and settlement of all criminal and civil disputes was agreed to by both the spouses.

10. Marriage is union of two hearts. The success of married life depends on an edifice built with the mutual trust, understanding, love affection and self sacrifice. Once this edifice is shaken, happy married life will be shattered into pieces. The result is one of the misery and emotion, when it is impossible to live like husband and wife any compulsion to unite them will lead to social evils and disturbance of mental peace and disorder



in the family life.

11. Once it is known that there is no prospects of the success of the marriage, to drag the legal tie amounts to cruelty towards the spouse and give rise to crime and even abuse of religion to obtain annulment of marriage.

12. The marriage in question exist only in form, lacking any substance or reality. There is hardly any utility in maintaining the marriage, when the emotional and other bounds which are of the essence of marriage have disappeared. After the marriage has ceased to exist in substance and in reality, there is no reason for denying divorce.

13. The Division Bench of Delhi High Court in judgment dated 20.12.2023 in MAT Appeal (F.C.) 107 of 2017 observed in para 50 to 54 are as under:-

*“50. A Co-ordinate Bench of this Court in the case of **Rajiv Chikkara vs. Sandhya Mathur 2016 SCC OnLine Del 6224** observed that where a divorce by mutual consent was agreed to by both the parties, the subsequent unilateral withdrawal of consent by a spouse without any sufficient or just cause, would add to the cruelty meted out to the other spouse.*

*51. The Apex Court in the case of **Rajib Kumar Roy Vs. Sushmita Saha 2023 SCC OnLine SC 1221**, observed as under:-*

“Continued bitterness, dead emotions and long separation in the given facts and circumstances of a case, can be



construed as a case of “irretrievable breakdown of marriage”, which is also a facet of “cruelty”. In Rakesh Raman Vs. Kavita reported in 2023 SCC OnLine SC 497, this is precisely what was held that though in a given case cruelty as a fault, may not be attributable to one party alone and hence despite irretrievable breakdown of marriage keeping the parties together amounts to cruelty on both sides.”

52. *The Kerala High Court in case of **Shreedharan Vs. Asha** in MAT Appeal No. 578 of 2015 decided on 18.09.2023, was confronted with the similar situation, whereby the offer of settlement failed on account of the wife refusing to accept the offer made by the husband. It was observed that the mutual consent for divorce failed in this matter as bargaining could not meet the level of expectation. The idea of “No-fault-Divorce” is to make the parties realize that there is a sensible way of parting on the agreed terms. Withholding mutual consent in a failed marriage, is nothing but cruelty.*
53. *In case of **Beena M.S. Vs. Shino G. Babu (2022) 2 KHC 11**, the Kerala High Court held that withholding of consent for mutual separation in itself would cause mental agony and cruelty to the spouse who demands separation.*
54. *Thus, such conduct of the appellant/ wife in driving the respondent to believe that their disputes were about to be put to an end and then to withdraw from the attempted settlement can cause disquiet, cruelty and uncertainty in the mind of the respondent. It is evident that the fight inter se the parties was not on any justifiable grounds, but was a war between the egos prompted by the desire to wreak vengeance*



against the spouse. Such unilateral withdrawal from divorce by mutual consent, thus, amounted to cruelty.”

14. The wife by virtue of her conduct has put the husband in a position of a huge disadvantage. Further, it is to be noted that wife has not made any endeavour to join her husband in filing petition under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. Therefore, her intention is crystal clear to only harass her husband. Moreover, she has slept over her right in the learned Family Court and the present Court proceedings.

15. In view of the position of the law as noted above, no spouse can unilaterally withdraw its consent for divorce by mutual consent when the grounds such as fraud, undue influence, force, misrepresentation and such consent is not being forced having been pleaded and proved satisfactorily.

16. It is a fit case of where decree of divorce should have been granted. Accordingly, the impugned Judgment/ Order dated 26.11.2018 passed in Matrimonial Case no. 908 of 2011 by the learned Additional Principal Judge, Patna is set aside and the present appeal is allowed and marriage solemnized between the parties Kanhaiya Prasad & Bibha Kumari on 12.07.2008 is dissolved by decree of divorce.

17. The appeal stands allowed and disposed of



accordingly. Office to draw up decree accordingly.

(Sunil Dutta Mishra, J)

(P. B. Bajanthri, J)

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	NAFR
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