

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.178 of 2012

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Rahmat Rozy, daughter of Dr. Q.S.A. Abbasi, wife of Sushil Kumar @ Sushil Kumar Bhagat R/O Mohalla - Registry Bazar, Sonpur, P.S. Sonpur, District - Saran

... .. Appellant/s

Versus

1. Sushil Kumar @ Sushil Kumar Bhagat, son of Ramchandra Bhagat, resident of Village - Koari Bryea Tola, P.S. Ganga Bridge, District - Vaishali
2. Chandrika Paswan, Son of Bhadaï Paswan, resident of Mohalla- Yusufpur, P.S. Industrial Area, District- Vaishali.

... .. Respondent/s

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Appearance :

For the Appellant/s : Ms. Aparna Bharti, Advocate
For the Respondent/s : Mr. Mithlesh Kumar Gupta, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE S. B. PD. SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. B. PD. SINGH)

Date : 25-09-2025

Heard the parties.

2. The appellant has come up in this appeal against judgment dated 08.07.2011 and decree dated 21.07.2011 passed by the learned Principal Judge, Family Court, Vaishali at Hajipur in O.S. Case No. 162 of 2010, whereby the petition filed by the respondent No. 1 under Section 27 of the Special Marriage Act, seeking dissolution of marriage by a decree of divorce, has been allowed *ex-parte*.

3. The pleaded case of the respondent No. 1 in his petition filed before the Family Court is that the respondent



No. 1 and the appellant had performed love marriage on 01.03.2004 and registered their marriage at the Civil Court, Patna. The marriage was consummated and a female-child was born out of the wedlock. The religion of the respondent-husband and the appellant-wife was different. Initially at the time of marriage, the appellant-wife accepted the proposal of the respondent No. 1 to convert herself into Hinduism but subsequently she denied and pressurized the respondent No. 1 to convert into Islam. The respondent No. 1 took good care of the appellant while she delivered a female child and when he went to the place of his service at Pune, he managed to get a rented house for the appellant-wife at Hajipur to live with her father and also provided a servant namely Chandrika Paswan (respondent No. 2). The appellant thereafter pressurized the respondent No. 1 to transfer one kattha of land in her name which was denied by the respondent-husband. However, in order to maintain peace in the family, the father of the respondent-husband had transferred one kattha of land to the appellant-wife through a registered sale-deed on 21.09.2007. In the year, 2007 itself, when the respondent-husband told her to



accompany him at his place of posting, she flatly denied and also refused to cohabit with him. The appellant, in order to put pressure upon the respondent-husband has filed criminal cases against him and other in-laws family members. The respondent-husband made all his efforts to bring the appellant back to her matrimonial house but she was not ready to live with the respondent-husband and started living separately from 17.11.2007. The appellant-wife has also filed a case for maintenance. The respondent-husband subsequently came to know that appellant-wife has illegal marital affairs with respondent No. 2 and they both are living together as husband and wife.

4. The appellant-wife has completely failed to discharge her matrimonial obligation towards her husband and other in-laws members. The actions/misdeeds of the appellant have caused great torture and harassment in the mind of the respondent-husband. This causes enormous pain and grief in the mind of the respondent-husband and he found that in spite of giving best possible love and affection, there was no change in her behaviour towards him, his parents, relations and friends. The appellant has left



the society and company of the respondent-husband and started living with respondent No. 2. The matrimonial relation between the appellant and respondent has already irretrievably broken down and there is no hope of restoration of their conjugal life. In the aforesaid circumstance, the present divorce petition was filed by the respondent-husband seeking dissolution of marriage with the appellant-wife.

5. After filing of the Divorce Petition, summons were issued to the opposite party/appellant but despite of that the opposite party/appellant did not chose to appear in the case. Subsequently, notices were issued in daily newspaper “Dainik Jagran” but still the appellant-wife did not appear to contest her case. Consequently, the case was fixed for *ex-parte* hearing against opposite party/appellant vide order dated 21.06.2011 and after taking/recording the evidence of respondent No.1/applicant, the learned Family Court passed the impugned judgment dated 08.07.2011. Being aggrieved with the said judgment and decree, the appellant/opposite party has filed the present appeal.

6. It is submitted on behalf of the appellant that



no notice was ever been served upon the appellant nor it appears from the impugned order that any notice was ever been served upon the appellant. So far as the publication of notice in the news-paper is concerned, the appellant did not get the knowledge of the same as she uses other newspaper. The appellant had no knowledge about any divorce case and learned Principal Judge, Family Court, Vaishali at Hajipur has allowed the divorce petition of the respondent-husband without hearing the other aggrieved person (appellant-wife).

7. After going through the impugned order passed by the learned Principal Judge, Family Court, it appears that the Matrimonial Suit was not decided after hearing both sides and in a flimsy manner, after hearing the respondent-husband and the materials brought on record only by the respondent, the order of dissolution of marriage was passed which is not sustainable in the eye of law. So, a fresh adjudication of the Matrimonial Suit is required after taking the evidence of both the parties and giving an opportunity to both of them to argue on the basis of materials available on record.

8. Accordingly, the judgment dated 08.07.2011 and



decree dated 21.07.2011 passed by the learned Principal Judge, Family Court, Vaishali at Hajipur in O.S. Case No. 162 of 2010 is set aside.

9. The matter is remanded back to the Principal Judge, Family Court, Vaishali at Hajipur to decide the case on merits after giving opportunity to both the parties to adduce their evidence within a period of three months from the date of receipt/production of a copy of this judgment. Parties shall co-operate in the proceeding.

10. The respondent No. 1 shall pay a sum of Rs. 25,000/-(Twenty Five Thousands) to the appellant-Rahmat Rozy to face remanded case. The amount shall be paid to her within a period of two months from today.

11. M.A. No. 178 of 2012 stands allowed.

12. Pending I.A, if any, stands disposed of.

(S. B. Pd. Singh, J)

(P. B. Bajanthri, CJ)

Shageer/-

AFR/NAFR	AFR
CAV DATE	05/08/2025
Uploading Date	25/09/2025
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