

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.792 of 2017

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Pramod Kumar Jha, S/o Sri Uma Nath Jha, Resident of Village- Patsa, P.S. Hasanpur, District- Samastipur, Bihar, Pin- Code - 848206, Presently Divisional Manager, Tata Motors Ltd., Flat No. 402, Kamdhenu Enclave, Ghorabandha, Jamshedpur Jharkhand, Pin- 831010

... .. Appellant/s

Versus

Swasti Sarita Panda, W/o Pramod Kumar Jha, Resident of Village- Patsa, P.S. Hasanpur, District- Samastipur, Bihar, Pin 848206, D/o late Dr. Pankaj Lochan Panda, Presently residing at Flat No. 4/7C UTSA MIG, New Town Kolkata, West Bengal- 700156

... .. Respondent/s

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Appearance :

For the Appellant/s : Mrs. Anju Jha, 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

This appeal by the petitioner/husband in Divorce Case No. 46 of 2016 is directed against the impugned Judgment and decree dated 12.06.2017 passed by learned Principal Judge, Family Court, Begusarai (hereinafter referred to as the 'Trial Court'), whereby, the said petition filed by the appellant/husband against the respondent/wife seeking dissolution of their marriage by a decree for divorce on the ground of desertion was dismissed by the Trial Court.

2. Respondent having been served with notice of



the petition, has remained unrepresented and has not contested the petition before the trial court. Despite personal service of notice and sufficient opportunities being granted to respondent in this appeal, no one has appeared on behalf of the respondent to contest this appeal.

3. Heard learned counsel for the appellant and perused the material on record.

4. The material on record discloses that the appellant and the respondent were working in TCS and their marriage was solemnized on 23.11.2009 as per Hindu rites and customs. From their wedlock, a female child, namely Kavya @ Sandy, was born on 14.08.2012, and she is presently in the custody of her mother/respondent.

5. The case of the appellant is that the respondent neglected him and subjected him to mental torture while living with him in Kolkata untill 04.10.2013. Thereafter, she deserted the appellant and began living separately at different places. Having failed in his attempt to restore conjugal life, the appellant instituted Matrimonial Case No. 81 of 2014 on 31.05.2014 under Section 9 of the Hindu Marriage Act, 1955 seeking restitution of conjugal rights.

6. By judgment and decree dated 22.05.2015, the



said petition was allowed by learned Principal Judge, Family Court, Begusarai in Matrimonial Case No.81 of 2014 in favour of the appellant against the respondent thereby granting an *ex-parte* decree for restitution of conjugal rights directing respondent to resume the conjugal life with the appellant.

7. It was contended that after the aforesaid judgment and decree for restitution of conjugal rights were passed in favour of the appellant/husband against the respondent/wife, despite sincere and honest efforts by the appellant for restitution of conjugal rights, she did not join him. As such, the appellant was compelled to institute the divorce petition (i.e. Divorce Case No. 46 of 2016) on 09.06.2016.

8. In the said divorce petition as well, the respondent remained *ex-parte* and did not contest the petition. In order to prove his case, the appellant examined himself as PW 1, his mother Smt. Umeshwari Devi, as PW 2, and his friend, Umesh Kumar, as PW 3, and produced certified copy of the judgment and decree passed in Matrimonial Case No. 81 of 2014, as referred to supra. The respondent remained *ex-parte*, did not cross-examine the Pws, nor she adduced any oral or documentary evidence on her behalf. The Trial Court held that on account of her job at Jamshedpur, the respondent-wife was



not living with appellant at Kolkata, and therefore he was not entitled to an order of dissolution of marriage, and divorce petition was dismissed. Aggrieved by the said dismissal of divorce petition, vide the impugned judgment/order dated 12.06.2017, the appellant filed this appeal.

9. Learned counsel for the appellant submitted that the learned trial court failed to appreciate that the respondent was reluctant to co-habit with the appellant and that she failed to comply with the decree of restitution of conjugal right for more than one year despite having knowledge of it from the court as well from the appellant. This itself a valid ground for a decree of divorce under Section 13(1A) (ii) of the Hindu Marriage Act, 1955. The wife is neither willing to live with the appellant nor she is appearing in the Court proceedings for the last about 10 years i.e. from the date of filing restitution of conjugal rights in the year 2014 (Matrimonial Case no. 81 of 2014), even after valid service of notice and such defiant attitude of the respondent also amounts to cruelty.

10. Learned counsel further submitted that the respondent has deserted the appellant since 04.10.2013 and has not allowed him to have co-habit for such a long period, which itself amounts to cruelty.



11. A perusal of the undisputed material on record indicates that the specific ground urged by the appellant for the purpose of seeking divorce was that respondent had deserted him and had been living separately since 04.10.2013. Furthermore, despite obtaining an *ex-parte* decree for restitution of conjugal rights in Matrimonial Case No. 81 of 2014, the respondent did not re-join the petitioner nor did she comply with the ex-parte judgment and decree, which is sufficient ground for divorce within the meaning of Section 13 (1A) (ii) of the Hindu Marriage Act, 1955.

12. In the present case, it is an undisputed fact that despite a judgment and decree for restitution of conjugal rights having passed in favour of the appellant/husband against the respondent-wife on 22.05.2015, the respondent has not joined the appellant and there has been no restitution of conjugal rights between the parties for more than a period of one year after the judgment/decreed which was passed on 22.05.2015. Further, she has failed to contest petition for divorce in the Family Court and in the present case.

13. Under these circumstances, we are of the opinion that the trial court committed an error in dismissing the petition without appreciating the above aspect as well as the un-



impeached, un-controverted and unchallenged pleadings and evidence of the appellant which constitute, sufficient grounds to grant decree for divorce and as such, the impugned judgment and decree dated 12.06.2017 passed in Divorce Case No. 46 of 2016 passed by the trial court deserves to be set aside and the petition filed for divorce deserves to be allowed.

14. In the result we proceed to pass following order:

(i) The appeal is allowed.

(ii) The impugned judgment and decree dated 12.06.2017 passed in Divorce Case No. 46 of 2016 on the file of learned Principal Judge, Family Court, Begusarai is set aside.

(iii) Divorce Case No. 46 of 2016 filed by the appellant stands allowed.

(iv) The marriage solemnized between the appellant and the respondent on 23.11.2009 stands dissolved by a decree for divorce.

(v) The appellant shall deposit lump-sum amount of Rs. 15 lacs with Registrar General of this Court for the purpose of educational and other miscellaneous expenses of his daughter, who resides with the respondent. Registrar General requested to deposit the same in a nationalized bank so that



interest on the same shall be accrued. It is clarified that the said amount with interest will be payable to the daughter of the appellant namely Kavya @ Sandy on filing the appropriate petition before the Registrar General and in the event of non-claiming by her within 13 years the deposited amount could be realized by the appellant by filing appropriate petition after the said period.

15. Copy of this judgment shall be communicated to the respondent through Registrar General of this Court at the earliest.

(Sunil Dutta Mishra, J)

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(P. B. Bajanthri, J)

(P. B. Bajanthri, J)

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