

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.685 of 2023

Abhinaw Kumar Gautam Son of Tulsi Prasad Sinha, Resident of Ram Krishna Nagar, Main Road, Sheikhpura, P.S. Ram Krishna Nagar, Dist. Patna.

... .. Appellant/s

Versus

Kumari Navodita, Wife of Abhinaw Kumar Gautam, Daughter of Rajan Kumar Mukul, Resident of Sunny Mandir, Barmasia, P.S. Barmasia, District Dhanbaad.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Priya Gupta, Advocate
For the Respondent/s	:	None

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 : 02-07-2025

Heard learned counsel for the appellant. None appears on behalf of the respondent.

2. The present appeal has been filed under Section 19 of the Family Court Act, 1984 impugning the judgment and decree dated 19.07.2023 passed by learned Additional Principal Judge, Family Court, Patna in Matrimonial (Divorce) Case No. 1349 of 2021, whereby the matrimonial suit, preferred by the appellant, seeking dissolution of marriage, 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 respondent was solemnized on 10.07.2016 as per Hindu Rights and Customs. After marriage, the respondent came to the house of appellant and lived together as husband and out of the wedlock, a male-child was born on 18.09.2017. During stay at her matrimonial house, the behaviour of the respondent with her husband and other in-laws family members were not amenable and she always misbehaved, humiliated and rebuked the appellant-husband in presence of his parents and relatives to lower down the reputation of the appellant. Ultimately, the respondent left her matrimonial house on 04.04.2018 with all her ornaments and since then she has been staying at her parental house. The appellant-husband made all his efforts to reconcile the matter with the respondent-wife but all his efforts went in vein. The appellant-husband has also filed Matrimonial Case No. 611 of 2019 for restitution of conjugal rights on 22.05.2019 in which notices were issued and it was validly served to the respondent but she preferred not to appear in the aforesaid case. Instead, she has filed Maintenance Case No. 423(M)



of 2019 before learned Principal Judge, Family Court, Dhanbad. In the aforesaid case, the appellant-husband is paying Rs. 10,000/- per month to the respondent-wife and child for their maintenance. The appellant, therefore, prayed that the marriage between the appellant and respondent be declared dissolved and a decree of divorce be passed in his favour.

4. The respondent was issued notices but she choose not to appear to contest her case. Hence, the case was proceeded *ex-parte*.

5. During course of trial, altogether four witnesses have been produced on behalf of the appellant which are P.W.1- Abhinaw Kumar Gautam (appellant himself), P.W. 2-Ramesh Prasad Singh, P.W. 3- Vinay Kumar Singh and P.W.4- Yadunandan Singh.

6. After conclusion of the trial, the learned Principal Judge, Family Court came to the conclusion that the appellant has not proved his case and the suit was accordingly dismissed.

7. Thereafter, being aggrieved and dissatisfied with the aforesaid judgment and decree passed by the learned



Additional Principal Judge, Family Court, Patna in Matrimonial (Divorce) Case No. 1349 of 2021, the present appeal has been filed by the appellant.

8. It is submitted by learned counsel for the appellant that the Family Court has failed to appreciate the cruelty meted out to the appellant. On this issue learned counsel for the appellant submitted that respondent was not willing to join her matrimonial home and stay in a joint family or stay in the in-law's house. The respondent has filed Maintenance Case No. 423(M) of 2019 before learned Principal Judge, Family Court, Dhanbad in which the appellant is paying Rs. 10,000/- per month to the respondent-wife and child for their maintenance. The appellant also alleges that respondent is not willing to stay at her matrimonial house as she has illicit relationship with her neighbour namely Jai Govind Pandey. It is therefore submitted that these issues suffice to say that appellant was facing humiliation and embarrassment in the family circle and these issues would fall under mental torture and leads to cruelty at the hands of the respondent-wife.



9. This Court, vide order dated 11.01.2024 had issued notices to the respondent and thereafter appellant was directed to serve the notice through news-paper publication but the respondent choose not to appear to contest her claim. Hence, vide order dated 26.06.2024, the notices issued to the respondent was directed to be validly served, however, one more opportunity was given to the respondent to appear and contest her case. Still respondent did not appear.

10. In view of the submissions made on behalf of the appellant and 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.

11. The appellant has prayed in Matrimonial (Divorce) Case No. 1349 of 2021 for dissolution of



marriage on the ground of cruelty and desertion.

12. 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.

13. 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.

14. 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."

15. After going through the aforesaid facts 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 proof 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 incident with reference to specific 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.



16. 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.

17. So far as ground of desertion is concerned, it has come in the evidence of the appellant-husband (PW-1) that marriage of the appellant with respondent was solemnized on 10.07.2016 and after marriage, they started living as husband and wife and on 18.09.2017, a male-child was born out of the wedlock. The appellant (P.W. 1) further deposed that on 04.04.2018, respondent left her matrimonial house along with her minor child and ornaments and since then she has been residing at her parental house and has deserted the appellant, however, in the matrimonial suit filed by the appellant for dissolution of marriage, the appellant has stated in para 8 that he regularly started visiting the house of respondent/opposite party to meet his wife and son at his Sasural. This fact



itself contradict the deposition of the appellant during trial which itself sufficient to suggest that respondent had not deserted the appellant for a considerable period of two years which might have been a legal ground for dissolution of marriage. The appellant has also alleged that respondent has illicit relationship with her neighbour Jai Govind Pandey but he has not brought on record any proof to suggest that respondent has illicit relationship with said person. This allegation of alleged adultery is not proved by any material information and admissible evidence. So also on the ground of desertion, the appellant is not entitled to get any decree of divorce. What is the result in his case filed under Section 9 of the Hindu Marriage Act for restitution of conjugal rights is not forthcoming in his evidence. Thus, the appellant-husband has also failed to prove that the respondent-wife has deserted the appellant-husband.

18. In "Jagdish Singh v. Madhuri Devi", (2008) 10 SCC 497, the Hon'ble Supreme Court while considering the scope of interference by first appellate court, observed as under:-



"24. It is no doubt true that the High Court was exercising power as first appellate court and hence it was open to the Court to enter into not only questions of law but questions of fact as well. It is settled law that an appeal is a continuation of suit. An appeal thus is a re-hearing of the main matter and the appellate court can re-appraise, re-appreciate and review the entire evidence "oral as well as documentary" and can come to its own conclusion.

25. At the same time, however, the appellate court is expected, nay bound, to bear in mind a finding recorded by the trial court on oral evidence. It should not forget that the trial court had an advantage and opportunity of seeing the demeanour of witnesses and, hence, the trial court's conclusions should not normally be disturbed. No doubt, the appellate court possesses the same powers as that of the original court, but they have to be exercised with proper care, caution and circumspection. When a finding of fact has been recorded by the trial court mainly on appreciation of oral evidence, it should not be lightly disturbed unless the approach of



the trial court in appraisal of evidence is erroneous, contrary to well-established principles of law or unreasonable..."

19. 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.

20. 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	18/06/2025
Uploading Date	03/07/2025
Transmission Date	N/A

