

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.736 of 2023

Wasim Akram @ Md. Wasim Akram, Son of Late Moinul Haque, Resident of village - Sugia Katsari, P.S. and District - Sheohar.

... .. Appellant/s

Versus

Ishrat Parween, Daughter of Sheikh Sikandar, Wife of Wasim Akram, Resident of Village - Marwa Pakar Kukuriya, P.O. Bakhara, P.S. - Saraiya, District- Muzaffarpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Md. Anisur Rahman, Adv.
For the Respondent/s : Mr. Dr. Bipin Chandra, Adv.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHAILENDRA SINGH)

Date : 28-08-2025

The instant Misc. Appeal has been preferred against the judgment dated 28.03.2023 and the decree dated 01.04.2023 passed by the learned Principal Judge, Family Court, Sheohar in Matrimonial Case No. 41 of 2022, by which the matrimonial case filed by the appellant for dissolving the matrimonial relationship between him and the respondent by way of a decree of divorce has been dismissed.

2. Mr. Md. Anisur Rahman, learned counsel appearing for the appellant, has submitted that the respondent is the legally wedded wife of the appellant, their marriage took place on 07.04.2018. After the marriage, the respondent came to her



matrimonial house to live a conjugal life with the appellant, but her attitude at the appellant's house was not normal, she behaved cruelly as she is the only daughter of her parents. The respondent never wanted to live in her matrimonial house with the appellant, nor did she have respect for the appellant and his family members. With the passage of time, a son was born from their conjugal relationship on 24.04.2019. Thereafter, on 18.04.2020, the father of the respondent came to the appellant's house and spoke to him aggressively, stating that he would take the respondent to his house. Accordingly, he took the respondent with him. After that, on 18.07.2020, the respondent came to the appellant's village to live at her matrimonial house, but again, on 03.09.2020, her father suddenly came to the appellant's house and tried to take the respondent away. However, due to opposition by the appellant and his family members, the respondent's father left after threatening them with dire consequences. On 07.12.2020, the respondent's father again came to the appellant's house and, in his absence and without giving any information to him, took the respondent along with all her belongings, with the intention of breaking all relations with the appellant. Finally, the respondent left the appellant's house on 07.12.2020. Thereafter, the appellant went to his



wife's house on 03.03.2021 and requested her parents to allow the respondent to return to her matrimonial home, but they did not consider his request, so he had to return. As per the appellant, he met with an accident on 10.06.2021 and was admitted to SKMCH, Muzaffarpur, but during that period, neither his wife nor her parents came to see him. Subsequently, the appellant and his brother, namely Shahid Prawez, went to the respondent's house on 03.09.2021 to bring her back, but she flatly refused, and her parents also did not allow her to go with him. They misbehaved with the appellant and his brother and threatened to implicate them in a false dowry case. According to the appellant, he made one last attempt on 03.10.2022 to bring her back, but she again refused.

3. It has further been submitted by the appellant's counsel that the appellant produced four witnesses before the Family Court, all of whom fully supported his case. The respondent did not appear before the Family Court despite notices being served to her, and consequently, the appellant's case was proceeded *ex parte*, as per the order dated 21.03.2023. Even then, the learned Family Court, Sheohar, dismissed his case without appreciating these facts, the conduct of the respondent, and the evidence adduced by the appellant.



4. On the other hand, Mr. Dr. Bipin Chandra, learned counsel appearing for the respondent, has submitted that the matrimonial suit filed by the appellant has been rightly dismissed by the learned Family Court, and there are sufficient grounds to justify this decision, which have been considered by the learned family court. Firstly, regarding the appellant's final attempt, as pleaded by him, to bring the respondent back, the appellant made contradictory statements about the date of that particular incident, which was rightly taken into account by the learned Family Court. Further, there are serious contradictions among the testimonies of the appellant's witnesses concerning the matrimonial allegations. It has also been argued that although the learned Family Court proceeded *ex parte* in the appellant's matrimonial suit, and the respondent did not get an opportunity to rebut the allegations, however, the materials available on the record are sufficient to justify dismissal of the appellant's suit.

5. We have heard both the sides, perused the pleadings of the appellant, the depositions of his witnesses, and also gone through the impugned judgment.

6. The learned Family Court proceeded *ex parte* against the respondent in the appellant's matrimonial suit, as the



respondent did not appear despite all processes having been exhausted to inform her of the suit. During the course of the argument, learned counsel for the respondent did not point out any illegality in the Family Court's order dated 28.03.2023, by which the case was proceeded *ex parte*. Therefore, the respondent is not entitled to have the impugned judgment and decree set aside solely on that ground. Though an *ex parte* decree has the same effect as a contested decree, however the court should be cautious when deciding matrimonial cases *ex parte*, as legal dissolution of marriage can be emotionally and legally complex. Divorce affects various rights, such as property, child custody, and the legality of subsequent marriage. Although the appellant's suit was dismissed despite the *ex parte* proceeding, however we would examine whether the dismissal is sustainable in the eyes of law or not.

7. The appellant has primarily alleged that the respondent was unwilling to live with him, despite several efforts made by him to bring her back. The appellant has provided specific dates of his efforts and incidents to support his claims. He has also highlighted ill-treatment given by the respondent and her family with him and his family members. Four witnesses, including the appellant himself, were examined



in support of these allegations. However, the learned Family Court dismissed the suit mainly due to some contradictions in the appellant's statements regarding the date of his final attempt to bring back the respondent. This approach was improper. The testimonies of the appellant's witnesses should have been evaluated comprehensively to determine whether the respondent's separation was justified or not and whether her alleged conduct amounted to mental cruelty with the appellant or not. The learned Family Court gave no such findings and appears to have decided the matter hastily without properly appreciating the evidences adduced by the appellant. The learned family court reiterated the facts stated by the witnesses in examination-in-chief and cross examination in four pages but evaluated their evidence in less than one page, indicating a casual approach.

8. For the aforesaid reason and in the interest of justice and for a fair decision, we are not inclined to uphold the impugned judgment and decree. Accordingly, both are set aside, and the matter is remitted back to the Family Court, Sheohar, with a direction to decide the appellant's matrimonial suit afresh without being prejudiced with the aforesaid observations.

9. The respondent will be given an opportunity to



file her written statement before the Family Court within thirty days from the date of receipt of a copy of this judgment. Thereafter, the appellant shall be given an opportunity to adduce an additional evidence, if he so desires. The respondent shall also be given an opportunity to cross-examine the appellant’s all witnesses and to produce her own oral and documentary evidence in support of her pleadings, if she so desires, in this regard, three dates shall be allotted to the respondent. The learned Family Court shall positively decide the appellant’s matrimonial suit within six months as per the above directions.

(Shailendra Singh, J)

I agree.

(P. B. Bajanthri, J)

annu/-

AFR/NAFR	AFR
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