

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.181 of 2020

Alok Kumar Jha, son of Anant Ram Jha, resident of Gosal Gaon, P.S. Gopalpur, District Bhagalpur at present residing at Flat No. 204, Devyani Tower, Basant Vihar Colony, Zero Mile, P.S. Industrial Area, District – Bhagalpur. Appellant/s

Versus

Nilu Kumari Wife of Alok Kumar Jha, Daughter of Amarnath Jha, Resident of Jai Vihar Colony, Jhurkhuria Road, P.S. Industrial Area, District Bhagalpur. Respondent/s

Appearance :

For the Appellant/s : Mr. Anil Kumar Singh, Advocate
For the Respondent/s : Mr. Ranjan Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER
(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

16 07-04-2026 Interlocutory Application (I.A.) Nos. 03 of 2025 and 04 of 2026 are two applications filed by the appellant praying for bringing additional evidence at the stage of appeal under the provision of Rule 41, Order 27 of the Code of Civil Procedure (CPC).

2. In I.A. No. 03 of 2025, it is submitted by the appellant that Matrimonial (Divorce Case No. 139 of 2015), renumbered as Matrimonial (Divorce Case No. 46 of 2019) was disposed of on 30th November, 2019 by the learned Principal Judge, Family Court at Purnea, whereby and whereunder, the learned Principal Judge dismissed the suit on contest with cost. The appellant has challenged the said judgment and decree of dismissal by filing the instant appeal.

3. In I.A. No. 03 of 2025, it is stated by the appellant

that at the instance of the respondent, a case under Section 498-A of the Indian Penal Code (IPC) was instituted against the appellant and the said criminal case bearing G.R. Case No. 5426 of 2017 ended vide judgment dated 23th September, 2024, whereby the appellant was acquitted of the charge. The appellant wants to bring the said document in evidence for consideration by the learned Principal Judge, Family Court, Purnea in the aforesaid Matrimonial (Divorce Case). By filing another application which was registered as I.A. No. 04 of 2026, it is submitted by the appellant that the respondent filed a petition of complaint before the learned Chief Judicial Magistrate, Purnea alleging commission of offence under Section 500 read with Section 34 of the IPC which was registered as Complaint Case No. 180 of 2020. After initial inquiry, the said complaint was dismissed by the learned Magistrate vide an order dated 4th February, 2021 under Section 203 of the Code of Criminal Procedure (Cr.P.C.). The appellant/petitioner also wants to bring the said documents in evidence for proper adjudication of the Matrimonial Case.

4. The learned Advocate on behalf of the respondent/opposite party has raised vehement objection against the prayer made on behalf of the appellant. Counter objection

has also been filed by the respondent. It is contended on behalf of the respondent that the matrimonial case was disposed of in the year 2019. The judgment in 498-A case was delivered in the year 2024 and the case for defamation was dismissed on 4th February, 2021. Therefore, on the date of delivery of the judgments of the above-mentioned criminal cases did not see the light of the day, therefore, the said documents cannot be considered for consideration of the matrimonial case under Order 41, Rule 27 of the C.P.C.

5. Order 41, Rule 27 runs thus:-

“27. Production of additional evidence in Appellate Court.—(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or ¹(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

6. It is needless to say that there are three grounds contained in Rule 27 of Order 41 and in the instant case, we are concerned with Rule 27(B) of Order 41 which states that if the Appellate Court requires any documents to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

7. It is needless to say that the appellant filed the matrimonial case on the ground of cruelty as envisaged in Section 13(1) (i-a) of the Hindu Marriage Act. A case based on cruelty under the Hindu Marriage Act is having continuing cause of action, meaning thereby the cause of action accrues day-by-day with the matrimonial relationship being live only on cessation of

matrimonial relationship, the ground of cruelty ceases.

8. In the instant case though the petitioner states in paragraph 17 of the plaint that the cause of action arose much earlier but on 14th April, 2014 when the respondent crossed her limits and created nuisance and finally on 1st May, 2015 she lastly left the petitioner and went to her *Maykaa*. Thus, discontinuation of marital relationship and conjugal life for a pretty long time also amounts to a form of cruelty observed by the Hon'ble Supreme Court in the case of ***Samar Ghosh Vs. Jaya Ghosh*** reported in ***2007 4 SCC 511***.

9. In the instant case since the cause of action is continuing one, perpetration of alleged cruelty till the date of the decree may be brought in evidence for consideration of the Court. Since the appeal is in continuation of the suit, the Appellate Court can consider subsequent judgments between the parties touching upon the allegation of cruelty in the matrimonial case.

10. In view of such circumstances, the decision of the Hon'ble Supreme Court in ***Gobind Singh & Ors. V. Union of India & Ors*** reported in ***2026 INSC 211*** is not applicable under the facts and circumstances of this case.

11. Since we have allowed both the applications under

Order 41 Rule 27 of the CPC and permitted the appellant to produce the documents, in question, before the Trial Court for consideration, the instant appeal be disposed of on contest and the suit be remanded back to the Trial Court with a direction to bring the judgment of G.R. Case No. 5426 of 2017 and Complaint Case No. 180 of 2020 and give opportunity to the respondent to cross-examine the witness on behalf of the appellant and also to adduce evidence in support of her case and to decide the matter afresh on the basis of the documents to be filed by the appellant and the evidence and cross-examination by the parties on such documents.

12. With the above direction, the instant appeal is disposed of.

13. However, the Trial Court is directed to rehear the appellant and the respondent within two months from the communication of this order and dispose of the case within one month thereafter positively.

(Bibek Chaudhuri, J)

(Chandra Shekhar Jha, J)

Jyoti Kumari/-

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