

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.315 of 2024

Md. Zakir Hussain son of Late Zainul Abedin, resident of village- Sadhua,
Police Station- Rangra Chowk, District- Bhagalpur.

... .. Appellant/s

Versus

Nikhat Perween daughter of Md. Ismayeel, resident of Mohalla- Ishakchak,
Police Station- Ishakchak, District- Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Waliur Rahman, Advocate Md. Najmul Hodda, Advocate
For the Respondent/s	:	Mr.

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

(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

6 17-03-2026 We have heard the learned Advocate for the appellant.

2. In spite of service of notice, the respondent has not turned up. Therefore, the instant appeal is taken up for hearing ex parte and we proceed to deliver the following judgment.

3. The husband/appellant filed Divorce Suit No. 179 of 2014 before the learned Principal Judge, Family Court at Bhagalpur with following reliefs:-

“ (i) The court be adjudicated and declared that the defendant is not wife of plaintiff since 12.08.2013 the day of pronouncement of divorce by the plaintiff according to Hanfi School of Mohammadan Law.

(ii) A decree of divorce be awarded.

(iii) Any after relief or reliefs, which the court thinks fit and proper be awarded.”

(Reproduced from the plaint without changing the

spellings and grammatical errors.)

4. The wife/defendant appeared in the said suit and had been contesting the suit by filing a written statement.

5. On the basis of the pleadings, the Trial Court framed as many as five issues which are reproduced below:-

“4. On the consideration of pleadings of the parties this court has framed following issues on 28.01.2016:-

I. Is the matrimonial case as framed, maintainable?

II. Has the petitioner valid cause of action for filing the case?

III. Is the petitioner entitled for a decree declaration of divorce as prayed for against the respondent?

IV. Is the Opposite party/respondent a legally wedded wife of the petitioner and entitled for any permanent alimony/maintenance along with her minor son?

V. To what other relief or reliefs, if any, the petitioner is entitled to?”

5. The appellant as plaintiff examined three witnesses including himself and deposed that he had divorced his wife by pronouncement of *Talaq*. The respondent-wife also examined three witnesses in the Trial Court including herself while other two witnesses are her neighbours, they denied the allegation of pronouncement of *Talaq* by the plaintiff in course of their

evidence. The Trial Court on careful consideration of evidence dismissed the said suit on the ground that the appellant failed to prove the factum of *Talaq*. The impugned judgment was pronounced on 12th March, 2024.

6. It is needless to say that declaration of divorce by pronouncement of '*Triple Talaq*' has been declared unconstitutional by the Hon'ble Supreme Court in the case of ***Shayara Bano Vs Union of India and Others*** reported in **2017 9 SCC 1**.

7. The learned Trial Court also refers to another decision of Gauhati High Court in the case of ***Ruquaiya Khatoon Vs Abdul Kalique Lashkar*** reported in **1981 1 Gau LR 375**.

8. The learned Advocate on behalf of the appellant submits that the judgment of the learned Trial Court does not suggest that the learned Trial Court took effort to reconcile the dispute between the parties. In support of his contention, the learned Advocate for the appellant refers to Section 9 of the Family Courts Act, where a duty is caste on the Family Court to make endeavor to assist and persuade the parties in arriving at a settlement in respect of the subject matter of the suit or proceedings and should the Family Court feel that there is

reasonable possibility of settlement between the parties, the proceedings have to be adjourned for a reasonable period to enable the parties to effect such settlement, only if it comes to the conclusion after the above exercise that the settlement is impossible, then the case should be posted for further steps such as written statement, counter issues, trial and so on. It is contended on behalf of the appellant that no such step was taken by the learned Trial Court and therefore, the impugned judgment should be set aside and the case be remanded back to the learned Trial Court for taking steps of settlement by and between the parties.

8. In support of his contention, the learned Advocate for the appellant also relies on the Family Court (Patna High Court Rules, 2000) to show that the primary duty of the Family Court is to conciliate the dispute between the husband and wife. In other words it is submitted by the learned Advocate on behalf of the appellant that the object of establishment of Family Court is not adjudication of adversarial dispute but to maintain and protect the family relationship between husband and wife, being the nucleus of the society.

9. Having heard the learned Advocate on behalf of the appellant and on careful perusal of the plaint filed by the

appellant, this Court finds that the appellant did not come forward before the Family Court praying for dissolution of marriage by decree of divorce. The suit framed by the appellant is in the nature of declaratory suit praying for declaration that the appellant has divorced his wife by pronouncement of ‘Triple Talaq’. In case of a declaratory suit for ratification of divorce which has already been effectuated, according to the appellant, contention of the learned Advocate for the plaintiff for failure on the part of the learned Family Court to reconcile the dispute between the parties falls flat because while divorce has been effectuated, the question of reconciliation does not arise.

10. Moreover, the High Court rightly considered the decision of the Apex Court in *Shayara Bano’s* case (supra).

11. For the reasons stated above, we do not find any illegality to set aside the judgment and decree of dismissal by the learned Trial Court.

12. The instant appeal is, therefore, dismissed.

(Bibek Chaudhuri, J)

(Chandra Shekhar Jha, J)

Jyoti Kumari/-

U			
---	--	--	--