

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1068 of 2017

... .. Appellant/s

Versus

1.

2.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Arun Kumar, Advocate
For the Respondent/s : Mr. Bela Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE NANI TAGIA

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 28-04-2026

Heard the parties.

2. The present appeal is directed against the judgment and decree dated 08.09.2017 and 19.09.2017 respectively passed by Principal Judge, Family Court, Muzaffarpur in Matrimonial (Divorce) Case No. 57 of 2010, whereby and whereunder the matrimonial case filed by the appellant for dissolution of marriage with the respondent has been dismissed.



3. Briefly stated, the fact of the appellant's case is that marriage between the appellant and respondent no. 1 was solemnized on 22.06.2007 according to Hindu Customs and Rights at Chhapramegh Math. It is asserted that both parties led their happy conjugal life together for about 6 months. It is asserted by appellant that he used to live in Mumbai for job and later on, he went to Dubai for the purpose of employment. It has been specifically mentioned that the appellant shifted from Mumbai to Dubai and from October, 2007 to December, 2009 the appellant stayed in Dubai for the purpose of employment. It has been asserted by appellant that after the appellant went to Mumbai, O.P. No. 1 went to her paternal house situated at village Sundarpur, Ratwara and she began to reside there and during the said period she never returned to the house of appellant. It is alleged that, during the absence of appellant, appellant was being informed that the conduct of his wife was not good as his wife was found roaming around with O.P. No.2 in Muzaffapur on several occasions. On 28.12.2009, when appellant returned from Dubai (abroad) and went to his in-laws' house to bring back his wife, the appellant was not treated well and no communication was being made from wife, rather Respondent No. 2 was called upon and appellant was abused



and ousted. Again, on 13.02.2010 appellant, all of a sudden, went to his in-laws' house in the evening and he did not find his wife at the house and when he enquired about the whereabouts of his wife (O.P. No.1), no satisfactory reply was given to the appellant. It was asserted by the appellant that at about 11:00 hours in the night, O.P. nos. 1 and 2 came from somewhere and when appellant made query, he was misbehaved, abused and assaulted and finally ousted from the house and snatched the belongings whatsoever possessed by the appellant. It is also claimed by appellant that during the subsistence of marriage, O.P. no. 2 used to visit the house of appellant and he used to make communication with his wife, but appellant did not doubt the conduct of O.P. No.2 at that time. But later on, appellant came to know that O.P. no. 2 had illicit relation with the O.P. no. 1. It is alleged by appellant that O.P. No. 1 clearly stated that she would not live with him rather she would spend her life with O.P. no. 2 as life partners. It is further stated that appellant made several efforts to conciliate, but the behaviour of opposite parties/respondents did not change and the respondents were adamant not to reside separately from each other and O.P. no. 1 was not ready to lead conjugal life with the appellant. On the one hand, opposite parties have an attitude of disrespect and



hatred towards the appellant and on the other hand, O.P. No.1 is having illicit relation with O.P. no. 2. It has been stated that since October, 2007 appellant and O.P. No.1 never lived as husband and wife and there was no conjugal relation between the appellant and O.P. no. 1 and both were residing separately for about two years. Despite the efforts being taken by the appellant since January, 2010, his wife is not ready to leave the company of O.P. no. 2 and she is also not ready to lead the conjugal life with the appellant since 13.02.2010 and the appellant was neglected as a husband by the O.P. no. 1.

4. The written statement was filed by opposite party no. 1 in which she has admitted the factum of marriage and it was stated that marriage was solemnized on 22.06.2007 and her parents gifted sufficient articles(Gold-Silver ornaments worth Rs. 1,00,000/-, utensils worth Rs. 11,000/-, clothes worth Rs. 6000/-, Cash Rs. 96,000/- and furniture and other articles worth Rs. 50,000/-) at the time of marriage. The marriage was solemnized at the paternal house of opposite party no. 1, i.e. at Sundarpur, Ratwara and after the marriage she went to the house of appellant and began to lead happy conjugal life, but it is stated by opposite party no. 1 that on account of demand of a Motorcycle, Colour T.V. and gold chain in dowry, O.P. no. 1 was



physically and mentally harassed and she was assaulted, as a result of which, she suffered miscarriage of three months fetus in September, 2007, and O.P. No.1 was treated by her parents in Sadar Hospital in support of which the document is available with O.P. No.1. O.P. no. 1 filed a case of cruelty against the appellant and his family members in the year 2009 bearing case no. 3326 of 2009 and the same is pending in the court. She has denied that the marriage had taken place at Chapra, Megh Math rather the marriage had taken place at village Sundarpur Ratwara, P.S. Piyar, Muzaffarpur at the paternal house of O.P. No. 1 and it is denied that the appellant was working in Mumbai and after that he went to Dubai for getting employment. The fact is that the appellant never went to Mumbai or Dubai since the date of marriage up to to December, 2009. The O.P. No. 1 has further denied that the she had gone to her paternal house on her sweet will and began to reside there. It has been stated that the O.P. No. 1 was being assaulted by mother, sister and brothers of appellant and her articles/belongings were snatched and she was ousted after which she began to reside at paternal house. The allegation, as alleged in divorce petition, was denied by the O.P. No. 1. It has been stated that the appellant himself is a habitual drunkard and he used to force his wife to share the bed with his



friends and on refusal by her, she was being assaulted and she has also denied that she has any relation with opposite party no. 2. She has stated that she neither has any connection with opposite party no. 2 nor is she on visiting terms with him (O.P. No. 2). She has further stated that she was tortured by the family members of the appellant to extort articles demanded in dowry and she was subjected to cruelty resulting in miscarriage of three months pregnancy. As such, she reasonably apprehends that if she again joins the company of the appellant, she would be done to death. She has further stated that the allegations, as alleged by the appellant, were totally without any basis and the same are false, frivolous and baseless.

5. Learned counsel for the appellant submits that judgment and decree passed by the concerned Court is bad in law as well as on facts. The concerned Court has not appreciated the facts and materials available on record while deciding the present divorce case. He further submits that the appellant has proved the ground of desertion as well as cruelty on the part of O.P. No. 1. He further submits that O.P. No. 1 has also admitted in written statement as well as in her evidence that she did not go to lead conjugal life with the appellant. It is also submitted that the plea of adultery involving O.P. No. 2 has been raised



and the concerned court failed to consider that the appellant had brought the case on the ground on adultery, cruelty and desertion. The appellant was examined as AW 1 and during his evidence he corroborated the facts narrated in original application of divorce and even O.P. No. 1 was not ready to lead the conjugal life with the appellant expressing the reasonable apprehension regarding threat of life and the court has not elaborated the said aspect. If both parties are not ready to lead the conjugal life, then, the decree of divorce is the ultimate solution in the given facts and circumstance of the case. The concerned court failed to consider that the factum of desertion has been proved which is one of the necessary conditions of the separation of spouses. The learned trial court failed to consider that the O.P. No. 1 left the house of appellant against will of the appellant. The learned trial court has also failed to consider that the O.P. No. 1 is in company with O.P. No. 2 and she does not like to joint the company of her husband who is the appellant. The impugned judgment and decree is quite confusing. The learned trial court itself has recorded that it is impossible to lead the conjugal life with the appellant. If O.P. No. 1 would lead the conjugal life with the appellant, she would be killed and so the appellant/applicant be directed to return all the articles gifted at



the time of marriage. Then, the learned trial court has not taken into account that the appellant himself suffered desertion on one hand and absence of wife from the matrimonial home without reasonable cause on the other. The said aspect has not been taken into account by the learned trial court at the time of dismissing the petition rather the learned trial court has given advice to dissolve the marriage by way of one time settlement by filing divorce petition under Section 13B of the Hindu Marriage Act. The very judgment of dismissal of the divorce case passed by the learned trial court is quite vague in view of the finding reflecting that both parties are not ready to lead the conjugal life. In the light of aforesaid facts and circumstances of the case, the impugned judgment and decree passed by the learned trial court are fit to be set aside.

6. Learned counsel for the respondent submits that the statement of appellant as mentioned in divorce petition is totally vague and there is no specific date, time and place with regard to the any particular incident. The statement is merely a bald statement which has nothing to do with the substantial matrimonial dispute. Appellant himself is a wrong doer and he has not taken any effort to bring his wife back to the matrimonial home though the respondent-wife is ready to reside



with the appellant-husband. In this way, the impugned judgment and decree passed by the learned trial court are justified and legal and no interference is needed.

7. From perusal of the impugned judgment and decree, it is evident that the same suffers from following basic flaws :-

(i) Firstly, there is a fundamental error in appreciation of grounds of divorce under Section 13 of the Hindu Marriage Act as the same has no spontaneity with the facts as asserted either in plaint or WS in the light of evidence adduced by both parties and selective appreciation of a particular circumstance from here and there does not reflect proper appreciation of facts and evidence in an effective way to magnify the holistic approach and when both the parties have submitted plaint and WS respectively, then there should be specific issue on the basis of pleading as submitted by both the parties in the light of statutory provisions as mentioned in Section 13 of the Hindu Marriage Act, but the court has not framed specific issue on the same subject matter and has also not discussed elaborately the specific ground as mentioned in aforesaid provision.

(ii) Though issues have been framed for determining the suit but the said issues have not been specifically discussed



in the light of the pleadings of both parties in the light of evidence adduced by the parties. It has also not been specifically pointed out whether pleadings are in consonance with the evidence adduced by the parties.

(iii) There is no description of OPW Nos. 1, 2 and 3 and the deposition of OPW Nos. 1, 2 and 3 has not been specifically elaborated and the finding given by the court is diabolical in nature which is very ambiguous and while dismissing the divorce petition the court has given suggestion which is also not consistent with the finding given by the court.

(iv) The aspect that both parties are not ready to lead their conjugal life together has not been taken into account.

(v) In the 2nd para at page 9 of the judgment the Court has discussed the Cr. Misc. No. 17810 of 2024 but the learned trial court has not mentioned whether the said case is part and parcel of the matrimonial case.

(vi) The court has also not discussed whether either of the parties has taken the plea of the said criminal miscellaneous case. It has also not been discussed whether the said miscellaneous case is part of plaint or WS and whether any issue is framed on the same point. It depicts how the court has cropped the said matter for deciding which issue has not been



mentioned in the plaint or WS.

(vii) Without framing the specific issue the concerned court has given its finding which is merely a ballpark assessment which is not in consonance with the material available on record.

8. While deciding the fate of the marriage, it is necessary for the court to secure the assets and liabilities in the light of the decision rendered by the Hon'ble Supreme Court in the case of *Rajnish vs. Neha* reported in *(2021) 2 SCC 324*, strictly in the prescribed format read with the judgment in the case of *Aditi @ Mithi vs. Jitesh Sharma* reported in *(2023) SCC Online SC 1451*.

9. Without delving into the merits of the case, on the basis of material available on record, we have recorded certain basic flaws as mentioned above for which it is proper to set aside the order of the learned trial court and remand back the present matter to the concerned court.

10. Accordingly, the impugned judgment and decree passed by the learned trial court are set aside and the matter is remanded back to the concerned Court to proceed with the matter afresh and frame specific issues in the light of the grounds mentioned under Section 13 of the Hindu Marriage Act



expeditiously preferably within a period of six months from the date of receipt/production of a copy of this order. Parties are at liberty, if so advised, to place on record, by way of an additional plaint or written statement, their respective statements regarding their present matrimonial status prior to framing of specific issue by the concerned court so that the holistic approach can be taken by the court to decide the fate of matrimonial life of both the parties coupled with the earlier divorce petition.

11. Pending interlocutory application(s), if any, shall also stand disposed of.

(Nani Tagia, J)

(Alok Kumar Pandey, J)

alok/-

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