

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.701 of 2018

Arun Kumar Singh Alias Arun Singh son of late Rajendra Singh resident of village Bhaudons, Police Station - Sheikhpura Sirari, District - Sheikhpura.

... .. Appellant/s

Versus

Nirmala Devi wife of Arun Kumar Singh alias Arun Singh resident of village and Post Office Bhadouns, Police Station Sheikhpura Sirari, District - Sheikhpura.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ashok Kumar Garg, Advocate
For the Respondent/s : Mr. Shree Kant Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)

Date : 25-08-2023

The present appeal has been filed impugning the judgment and order dated 31.07.2017, passed in Title Suit (Divorce) Case No. 14 of 2014, by Ld. Principal Judge, Family Court, Sheikhpura, whereby the petition of the Appellant-Plaintiff filed for divorce under Section 13 of the Hindu Marriage Act, 1955, has been dismissed on contest.

2 (i) The case of the Appellant-husband, as per the pleadings, is that the marriage between the Appellant-Plaintiff and Respondent-Defendant was solemnized on 1st May, 1978 and after the marriage, one daughter, namely Rimjhim Kumari



was born in the year 1990 out of wedlock and thereafter, the Appellant-Plaintiff did not get any other child.

2 (ii) It is further pleaded that with the consent of the Respondent-Defendant-wife, the Appellant-Plaintiff-husband solemnized second marriage with another girl in the year 2004. Thereafter, the conjugal life of the Appellant-Plaintiff and Respondent-Defendant became gradually bitter and consequently both the parties began to live separately since 2005 and since then they have not been able to live together.

2 (iii) It is further pleaded that in the year 2010, the Respondent wife filed a complaint case bearing Complaint Case No. 197C of 2010 in the Court of Ld. Chief Judicial Magistrate, Sheikhpura for the offences punishable under Section 498A of the IPC and Sections 3 and 4 of the Dowry Prohibition Act. The Respondent-wife also lodged another criminal case on 25.11.2011, bearing Sheikhpura P.S. Case No. 365 of 2011 for the offences punishable under Section 498A read with Section 34 of the IPC. However, in both the criminal cases, the Appellant-husband got anticipatory bail by this Court, subject to the conditions that the Appellant-husband will pay Rs. 5,000/- per month to the Respondent-wife towards her maintenance, with further condition that he will deposit additional ₹5 lacs



within a period of one year for the marriage of his daughter Rimjhim Kumari. It was also stipulated in the anticipatory bail order that both the parties will file appropriate application for mutual divorce after the marriage of their daughter. In compliance of the direction of this Court, the Appellant had deposited ₹5 lacs in the account of his daughter, Rimjhim Kumari and her marriage was solemnized in the year 2013. Thereafter, the Appellant-husband has made request to the Respondent wife to file divorce petition under Section 13(B) of the Hindu Marriage Act, 1956 for divorce with mutual consent, but the Respondent-wife did not agree to file the divorce petition. Hence, the Appellant has filed the present divorce petition on two grounds, firstly on the ground of undertaking given by the Respondent-wife before this Court and, secondly, on the ground that they have been living separately for more than ten years.

3. On notice, the Respondent-Defendant-wife appeared before the Family Court and filed her written statement, wherein she had admitted that her marriage was solemnized with the Appellant-Plaintiff in the year 1978 and out of wedlock, one daughter, namely, Rimjhim Kumari was born. It is also averred in her written statement that prior to 2004, her



pregnancy was got terminated by the Appellant husband against her will. It is also averred in the written statement that the Appellant husband had performed second marriage in year 2004 on his own, whereas she wanted to live with him. It is also admitted that she has filed two criminal cases against her husband for cruelty committed by him. It is also admitted that it is true that as per the order of this Court dated 10.09.2012, petition for divorce with mutual consent was to be filed after marriage of her daughter Rimjhim Kumari. However, the Appellant-husband filed divorce petition in the Court of Ld. District Judge, Munger without consent of Respondent-wife. She came to know about the divorce petition after she filed Maintenance Case No. 28M of 2011. She had also claimed that to avoid payment of maintenance to her, the present petition for divorce has been filed.

4. On the basis of pleadings of the parties, the Ld. Principal Judge, Family Court, Sheikhpura framed the following issues:-

1. Whether the suit as framed is maintainable?
2. Whether the applicant has got valid cause of action for the suit?
3. Whether the O.P. has deserted the applicant from more then 10 years without any reasonable cause?
4. Whether the applicant was treated with cruelty by



the O.P.?

5. Whether the applicant can file divorce petition against his wife (O.P.) on the ground that his wife did not become agree to file divorce case u/s 13(B) of Hindu Marriage Act?

6. Whether the applicant is entitled to get a decree of divorce against his wife (o.p)?

5. During trial, the present Appellant-Plaintiff had examined the following three witnesses in support of his petition:- (i). A.W.-1-Ramesh Prasad Singh, (ii). A.W.-2-Krishan Murti, (iii). A.W-3-Arun Kumar Singh.

6. However, no document has been exhibited on behalf of the Appellant-Plaintiff.

7. Respondent-wife has neither examined any witness nor exhibited any document, nor has she cross-examined the witnesses of the Appellant-husband.

8. (i) On perusal of the deposition made on behalf of the Plaintiff husband, we find that P.W.-1, Ramesh Prasad Singh has deposed in his examination-in-chief that marriage between the Appellant and the Respondent was solemnized about 30 years back as per Hindu rites and customs. It is further deposed that after the marriage, the conduct of the Respondent wife towards the Appellant husband and his family members was not good. The Appellant-husband lived with Respondent-wife for



few days at his home. Thereafter, he fled away from his house leaving the Respondent-wife. It is further deposed that one daughter, namely, Rimjhim Kumari, was born out of their wedlock. He further deposed that the father of the Appellant-husband has sold off all his land at his village and the Respondent-wife was living at Jamui with her mother-in-law and her daughter. He has further deposed that the parents of the Appellant-husband has died. It is also deposed that the Appellant-husband had solemnized second marriage in the year 2004 and Respondent-wife has filed two criminal cases against the Plaintiff-husband on account of harassment for non-fulfillment of demand of dowry and in those cases, there was mutual agreement between the parties before the High Court, as per which, the Appellant was to deposit ₹5 lacs in the bank account for marriage of his daughter and to pay ₹5,000/- per month to the Respondent wife as maintenance. But he has no information whether the Appellant has paid the aforesaid amount or not? He is also not aware whether the marriage of the daughter of the Plaintiff-husband has been solemnized or not? It is also deposed that as per the agreement, petition for divorce with mutual consent was to be filed, but the Respondent did not give her consent for divorce. This witness has not been cross-



examined on behalf of the Respondent-wife despite opportunity being given to her.

8. (ii) Krishna Murti, who is the friend of Plaintiff-husband has been examined as P.W.-2. During examination-in-chief, he has deposed that marriage between the Appellant-husband and Respondent-wife was solemnized as per the Hindu rites and customs about 30 years back and after the marriage, both had been living together for three years and out of wedlock one daughter, namely Rimjhim Kumari was born. Subsequently, the conduct of the Respondent-wife towards the Appellant-husband was not proper. Hence, it was not possible for the Appellant-husband to live conjugal life with her and the Appellant left the village leaving the Respondent-wife and thereafter, the Respondent-wife used to beat the parents of the Appellant-husband, who are no more now. He has further deposed that the Respondent-wife had lodged two criminal cases for dowry demand and in those criminal cases, there was agreement between the parties in the High Court while granting anticipatory bail and as per the agreement, the Appellant husband had to pay ₹5 lacs for marriage of his daughter and to pay ₹5,000/- per month to the Respondent-wife for her maintenance and after marriage of their daughter, a petition for



divorce with mutual consent was to be filed. It is further deposed that their daughter is now married and she lives at her matrimonial home. The Appellant had given ₹5 lacs for marriage of his daughter, but the Respondent wife did not give consent for divorce. This witness has also not been cross-examined on behalf of the Respondent-wife despite the opportunity being given.

8. (iii) The Appellant-Plaintiff himself has been examined as P.W.-3. He deposed in his examination-in-chief that his marriage was solemnized with the Respondent-wife about 30 years back as per Hindu rites and customs. It is further deposed that for ten years of the marriage, the Respondent-wife was living with him, thereafter, her conduct towards him as well as his parents was not good. It is further deposed that after ten years of marriage, he went to Patna for earning his livelihood after leaving Respondent-wife at home. His parents sold off his land and sale proceed was taken by the Respondent-wife and thereafter she ousted her parents from the house. Thereafter, his parents started living with their daughter, though, later on they joined the Appellant-husband at Patna to live with him and subsequently both of them died at Patna. It is also deposed that Respondent-wife has lodged two criminal cases against him



alleging demand of dowry and at the time of grant of anticipatory bail in the aforesaid cases before this Court, there was agreement between the parties that the Plaintiff-husband will pay ₹5 lacs for marriage of his daughter and ₹5,000/- per month to the Respondent-wife for her maintenance. It was also agreed that after the marriage of the daughter, the parties will file a petition for divorce with mutual consent. It is further deposed that he paid ₹5 lacs for marriage of his daughter and now she is married and he is also paying ₹5,000/- per month to the Respondent-wife towards her maintenance. However, the Respondent-wife did not agree for filing a petition for divorce with consent. Hence, he has filed the present divorce petition on account of cruel conduct of Respondent wife towards him. This witness has also not been cross-examined on behalf of the Respondent, despite opportunity being given to her.

9. After consideration of submission on behalf of the Appellant as well as evidence on record, Ld. Principal Judge, Family Court has found that divorce petition was not maintainable because there was no valid cause of action to file the petition for divorce. It was also found by Ld. Family Court that refusal to file petition for divorce with mutual consent cannot be a ground for divorce under the Hindu Marriage Act. It



was also found by Ld. Family Court that the Appellant-Plaintiff failed to prove the allegation of cruelty or desertion against the Respondent-wife to get decree of divorce.

10. However, Ld. counsel for the Appellant-Plaintiff submits that the pleadings made by the Plaintiff-Appellant was not properly appreciated by Ld. Family Court and hence it was erroneously found that divorce petition was not maintainable having no cause of action. It was also erroneously found by Ld. Family Court that alleged ground of cruelty and desertion have not been proved. It is further submitted that as per the pleading and evidence on record, it is apparent that the Respondent-Defendant had deserted the Appellant-Plaintiff for more than two years and she was also cruel towards him and his family members and he had valid cause of action to file present divorce petition.

11. Per contra, Ld. counsel for the Respondent-Defendant-wife, however, submits that no ground for divorce whether cruelty or desertion has been pleaded or proved by the Appellant. She further submits that as per the pleading made in the divorce petition, the Appellant-Plaintiff has not averred any facts which could constitute ground of cruelty or desertion. The evidence adduced by the Appellant-Plaintiff in regard to cruelty



or desertion before the Family Court was beyond pleadings and it goes without saying that such evidence beyond pleadings are liable to be discarded by the Court.

12. In view of the aforesaid facts and circumstances, the following points arise for consideration by this Court:-

(i) Whether the Appellant-Plaintiff had cause of action to file the divorce petition before the Family Court.

(ii) Whether the Appellant-Plaintiff has adduced evidence beyond pleadings, if yes, what would be its effect?

(iii) Whether the Appellant-Plaintiff has proved the ground of cruelty and desertion to get decree of divorce under Section 13 of the Hindu Marriage Act, 1956 against the Respondent-wife.

13. Let us consider the points one by one.

Point No.1

14. Before we consider this point, it is imperative to know what is cause of action. It is relevant to point out that the word “cause of action” is nowhere defined by the Civil Procedure Code. However, it has been described by Hon’ble Supreme Court on various occasions as a bundle of essential facts which are required to be proved for obtaining relief as sought for. It is also settled position of law that to see whether



the plaint discloses any cause of action, the Court is only required to look into the averment made in the plaint and the document, if any, filed in support of the plaint. It is also settled position of law that reading of the plaint should be meaningful and not formal. Clever drafting creating illusion of cause of action can not be permitted. A clear right to sue must be shown in the plaint. Reliance is placed on the following judgments of Hon'ble Supreme Court:

1. **Mayar (H.K.) Ltd. & Ors Vs. Owners & Parties, Vessel M.V. Fortune** as reported in **(2006) 3 SCC 100**.
2. **I.T.C. Ltd, Vs. Debts Recovery Appellate Tribunal**, as reported in **(1998) 2 SCC 70**.
3. **T. Arivandanadam Vs. T.V. Satyapal and Anr.** As reported in **(1997) 4 SCC 467**.

15. Hon'ble Supreme Court, in para 11 of **Mayar (H.K.) Ltd. case** (supra) has observed- "Under Order 7 Rule 11 of the Code, the court has jurisdiction to reject the plaint where it does not disclose a cause of action....." In para 12 of **Mayar (H.K.) Ltd. case** (supra), **Hon'ble Apex Court** has further observed that plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The court has to read



the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint.

16. In para 16 of **I.T.C. Limited Vs. Debts Recovery Appellate Tribunal** as reported in **(1998) 2 SCC 70, Hon'ble Supreme Court**, after referring to **T. Arvindandam case** (supra), has observed that the question is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 CPC.



clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint.

17. In para 5 of **T. Arvindandam case** (supra), **Hon'ble Supreme Court** has observed that the Ld. Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, CPC.

18. Now the question is what are the essential facts which constitute cause of action for the petitioner to file divorce petition under Section 13 of the Hindu Marriage Act for dissolution of his marriage with Respondent-Defendant.

19. Section 13 of the Hindu Marriage Act provides for dissolution of marriage on a petition presented by either of husband or the wife by a decree of divorce on the ground as enumerated thereunder. The grounds as provided in Section 13 of the Hindu Marriage Act are exhaustive in nature. Desertion is



also provided as a ground for dissolution of marriage under Sections 13(I)(ib) of the Hindu Marriage Act. For ready reference Section 13 of the Hindu Marriage Act reads as follows:-

“13. **Divorce.** - (1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

- (i) has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or
- (ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or
- (ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or
- (ii) has ceased to be a Hindu by conversion to another religion; or
- (iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation.- In this clause, -

- (a) the expression □mental disorder□ means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;



(b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or

(iv) Omitted

(v) has been suffering from venereal disease in a communicable form; or

(vi) has renounced the world by entering any religious order; or

(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive;

Explanation. In this sub-section, the expression desertion means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

(1A) Either party to a marriage, whether solemnised before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground-

(i) that there has been no resumption of cohabitation as between the parties to the



marriage for a period of 22 [one year] or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of 22 [one year] or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,-

(i) in the case of any marriage solemnised before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnisation of the marriage of the petitioner:

Provided that in either case the other wife is alive at the time of the presentation of the petition; or

(ii) that the husband has, since the solemnisation of the marriage, been guilty of rape, sodomy or 23 [bestiality; or]

(iii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section



125 of the Code of Criminal Procedure, 1973 (2 of 1974) [or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898)], a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards; or

(iv) that her marriage (whether consummated or not) was solemnised before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

Explanation. This clause applies whether the marriage was solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976)”

20. From perusal of the divorce petition, filed by the Appellant-Plaintiff before the Family Court under Section 13 of the Hindu Marriage Act, we find that in his petition, he has averred that he has filed the divorce petition on two grounds, firstly, on the ground of undertaking given by opposite party before Hon’ble High Court, Patna and secondly, on the ground that they have been living separately for a period of more than



ten years. Here, it is pertinent to mention that the grounds for dissolution of marriage has been provided in Section 13 of the Hindu Marriage Act and no other ground can be claimed to dissolve the marriage between the parties and after perusal of Section 13 of the Hindu Marriage Act, it is clear that no undertaking given to any Court can be a ground for dissolution of marriage. At most, in case of failure to fulfill the undertaking given to a Court may invite initiation of contempt of the Court proceeding, but it cannot be a ground for divorce. As far as second ground, as mentioned by the Appellant-Plaintiff that they have been living separately for more than ten years, it is pertinent to point out that as per Section 13(I)(ib) of the Hindu Marriage Act, any marriage solemnized may on a petition presented by either the husband or the wife can be dissolved by decree of divorce on the ground that other party has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition.

21. Coming to the averment made in the divorce petition, we do not find any averment to the effect that the Defendant-Respondent has deserted him. Only averment made in the divorce petition is that both were married on 1st May, 1978 and after marriage, one daughter, namely Rimjhim Kumari



was born in the year 1990 out of wedlock and thereafter the Appellant-Plaintiff did not get any other child. As per further averment, the Appellant-Plaintiff has entered into second marriage with the consent of of the Respondent-Defendant in the year 2004 and thereafter, conjugal life of the Appellant-Plaintiff and Respondent-Defendant became gradually bitter and consequently both parties began to live separately since 2005 and since then they have not been able to live together. It is very important to note that as per this averment, it is not a case of desertion by either of the parties. As per Explanation to Section 13 of the Hindu Marriage Act, 'desertion' means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party and includes the wilful neglect of the petitioner by the other party to the marriage and its grammatical variations and cognate expressions shall be construed accordingly.

22. 'Desertion' has been further explained by **Hon'ble Supreme Court** on various occasions. As per case laws, for the offence of desertion so far as deserting spouse is concerned, two essential elements must be there, namely, (I) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two



elements are essential so far as the deserted spouse is concerned : (I) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. Reliance is placed on the following judgments pronounced by Hon'ble Apex Court:

(i) **Bipinchandra Jaisinghbai Shah V. Prabhavati** as reported in **AIR 1957 SC 176**.

(ii) **Lachman Utamchand Kirpalani Vs. Meena** as reported in **AIR 1964 SC 40**.

(iii) **Debananda Tamuli Vs. Kakumoni Katakya** as reported in **(2022) 5 SCC 459**.

23. But in the petition, we find that there is no averment made which may fulfill the requirements of the aforesaid essential conditions for constituting desertion. Factum of separation is averred, but there is no averment in regard to intention of the respondent wife to bring cohabitation permanently to an end. There is also no averment to the effect that there was no consent given by the Appellant-Plaintiff to the Respondent-Defendant to live separately. There is also no averment that there was no reasonable cause to the Respondent-Defendant to live separately.

24. In view of the aforesaid facts and circumstances, we find that there is no cause of action to the petitioner to file



the divorce petition before the Family Court. It is surprising how the Family Court continued with such divorce petition bereft of any cause of action for dissolution of marriage wasting time in conducting the trial where there was no need of any trial and petition should have been rejected at the threshold under Order 7 Rule 11 of the CPC.

Point no.2

25. The next point for consideration is whether the evidence adduced by the Appellant-Plaintiff were beyond pleadings and if so, what would be its effect? The perusal of averments made in the petition and deposition of the witnesses, examined on behalf of the Appellant-Plaintiff, we find that there is no averment in the petition which constitute ground of cruelty or desertion or any other ground as provided under Section 13 of the Hindu Marriage Act. However, in the statement of the Appellant-Plaintiff and his witnesses made during the course of examination-in-chief, case has been developed stating that it was not possible for the Appellant-Plaintiff to live conjugal life with the Respondent-Defendant-wife and the Appellant-Plaintiff left the village leaving the Respondent-wife and thereafter, the Respondent-wife used to beat the parents of the husband, who are no more now. Such evidence, given by the Appellant-



husband or his witnesses during course of examination-in-chief, is beyond the pleading. There is no such averment in the petition.

26. In the light of various judicial pronouncements, it is settled principle of law that the evidence adduced beyond the pleadings is liable to be rejected and cannot be considered for grant of relief as prayed for by the petitioner.

27. **Hon'ble Supreme Court** in para 12 of **National Textile Corporation Ltd. Vs. Nareshkumar Badrikumar Jagad & Ors.** as reported in (2011) 12 SCC 695 after referring to **Trojan & Co. Vs. Nagappa Chettiar** as reported in AIR 1953 SC 235, **State of Maharashtra Vs. Hindustan Construction Co. Ltd.** as reported in (2010) 4 SCC 518 and **Kalyan Singh Chouhan Vs. C.P. Joshi** as reported in (2011) 11 SCC 786, observed that pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial. Therefore, the pleadings are more of help to the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It has been further observed that as a settled legal proposition, relief not founded on the pleadings should not be granted. A decision of a



case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ.

28. In Prakash Rattan Lal Vs. Mankey Ram as reported in **ILR (2010)III Delhi 315**, Hon'ble Delhi High Court has referred to **Ram Sarup Gupta by LRs Vs. Bishun Narain Inter College** as reported in **(1987) 2 SCC 555** and **Harihar Prasad Singh Vs. Balmiki Prasad Singh**, as reported in **(1975) 1 SCC 212** and observed in para 4 of the judgment that the sole purpose of pleadings is to bind the parties to a stand. When the plaintiff makes certain allegations, the defendant is supposed to disclose his defence to each and every allegation specifically and state true facts to the court and once the facts are stated by both the parties, the court has to frame issues and ask the parties to lead evidence. It is settled law that the parties can lead evidence limited to their pleadings and parties while leading evidence cannot travel beyond pleadings. If the parties are allowed to lead evidence beyond pleadings then the sacrosanctity of pleadings comes to an end and the entire purpose of filing pleadings also stand defeated. The other purpose behind this is that no party can be taken by surprise and



new facts cannot be brought through evidence which have not been stated by the defendant in the written statement. The law provides a procedure for amendment of the pleadings and if there are any new facts which the party wanted to bring on record, the party can amend pleadings, but without amendment of pleadings, a party cannot be allowed to lead evidence beyond pleadings.

29. Hon'ble Supreme Court in para 12 of **Bachhaj Nahar Vs. Nilima Mandal & Anr.** as reported in **(2008) 17 SCC 491** has also observed that the object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. It has been further observed that the Hon'ble Apex Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on



particular causes must take. Hon'ble Supreme Court further held in para 10 of the judgment as under:-

“10. The High Court, in this case, in its obvious zeal to cut delay and hardship that may ensue by relegating the plaintiffs to one more round of litigation, has rendered a judgment which violates several fundamental rules of civil procedure. The rules breached are:

(i) No amount of evidence can be looked into, upon a plea which was never put forward in the pleadings. A question which did arise from the pleadings and which was not the subject-matter of an issue, cannot be decided by the court.

(ii) A court cannot make out a case not pleaded. The court should confine its decision to the question raised in pleadings. Nor can it grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint.

(iii) A factual issue cannot be raised or considered for the first time in a second appeal.”

30. Hon'ble Supreme Court in para 6 of **Ram Sarup Gupta case** (supra) has observed that it is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that



all necessary and material facts should be pleaded by the party in support of the case set up by it.

31. Hence, the evidence adduced beyond pleadings, as stated above, is liable to be rejected and cannot be considered as a proof of the alleged grounds of divorce.

Point No.3

32. The next point for consideration is whether the Appellant Plaintiff has proved the ground of cruelty and desertion for dissolution of his marriage with the Respondent-wife. We have already found that there is no pleading in regard to desertion or cruelty and the evidence, which has been adduced by way of deposition beyond the pleadings, cannot be considered for grant of relief as sought for. Even otherwise, even as per the evidence adduced beyond the pleadings, it is apparent that the husband himself has left the home and not the Respondent-wife. The Respondent-wife was still living at his home in the village. With regard to the cruelty, we find that there is no averment in the petition, which may constitute legal cruelty as provided under Section 13(I)(ia) of the Hindu Marriage Act. Beyond the pleading, he has deposed that during his examination-in-chief that when he left his home to live at Patna, the Respondent-wife, who was living at his home at



village, used to beat his parents. But there is no such pleading or averment in the petition and such evidence is beyond the pleading, which is liable to be rejected and it cannot be considered as a proof of the alleged ground for divorce.

33. In the averment, though he has averred that Respondent-wife had lodged two criminal cases against him under Section 498A of the IPC, but he has not averred in the petition or even in his examination-in-chief that the criminal cases lodged by the Respondent-Defendant are false and fabricated and they were lodged in order to harass the Appellant-husband. As such, even lodging of criminal cases under Section 498A of the IPC by the Respondent-wife cannot be construed as cruelty to the Appellant-husband. After perusal of the averment made in the petition, we further find that as per averment of the Appellant-husband, he has entered into second marriage, though allegedly with the consent of the Respondent-wife. However, as a common knowledge, such second marriage is not tolerated by any wife and that is why entering into second marriage itself amounts to cruelty to the first wife giving her reason to live separately and giving cause of action to file complaint cases under Section 498A of the IPC and as such, the submission of Ld. counsel for the Appellant-husband that he has



proved the ground of cruelty for dissolution of marriage has no substance.

34. As such, we find that there is 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. The present appeal is dismissed, accordingly, upholding the impugned judgment. Both the parties shall bear their own costs. Let the decree be drawn accordingly.

35. The Registrar General is directed to circulate a copy of this judgment amongst all the Presiding Officers of the Family Courts and send a copy to the Director of Bihar Judicial Academy for needful.

(Jitendra Kumar, J)

(P. B. Bajanthri, J)

Amrendra/ashis

AFR/NAFR	AFR
CAV DATE	13.07.2023
Uploading Date	25.08.2023
Transmission Date	

