

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.647 of 2024

Ajay Kumar Raut

... .. Appellant/s

Versus

Soni Devi

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Nikita Mittal

For the Respondent/s : Mr. Ashok Kumar Singh

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and

HONOURABLE MR. JUSTICE RANA VIKRAM SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date : 08-09-2026

The instant Miscellaneous Appeal is directed against the judgment and decree of dismissal of a suit for dissolution of marriage by decree of divorce, which was registered as Matrimonial Case No. 26 of 2020 before the learned Principal Judge, Family Court, Aurangabad. The husband of the Opposite Party is the appellant before this Court, challenging the judgment and decree of dismissal dated 2nd July, 2024.

2. The case of the appellant, in brief, is that his marriage was solemnized with the Opposite Party on 21st January, 2014. After the marriage, the Opposite Party came to her matrimonial home to lead conjugal life with the appellant but subsequently she left her matrimonial home. On two occasions she visited her matrimonial home, once after marriage and secondly to attain the *Shradh* Ceremony of her father-in-law in the year 2015. From the very beginning of her marriage, the Opposite Party used to insist



the appellant to leave her parents and stay separately with her. The appellant was not agreeable to such proposal of the respondent.

3. During the pendency of the suit at the intervention of the trial court the appellant brought the respondent to his home on 25th May 2016. But on 28th May 2016, she called her parents and told that they assaulted petitioner mercilessly under Civil Court Campus, Aurangabad over which an FIR being Aurangabad Town P.S. Case No. 164 of 2016 was lodged. Since, then the parties are living separately. The respondent flatly refused to live with the appellant as his wife. She not only humiliated and harassed him but the appellant was subjected to cruelty by his wife. In the year 2015, the appellant filed a suit for restitution of conjugal right under Section 9 of the Hindu Marriage Act. In retaliation thereof the respondent filed a case under Section 498A of the IPC and Section 3 and 4 of the Dowry Prohibition Act. She also filed an application under Section 125 of the CrPC against the appellant. The suit for restitution was decreed in favour of the appellant on 10th July 2018. In spite of the said decree, the respondent did not come back to her matrimonial home to continue the conjugal life with the appellant. It is contended that the appellant is an unemployed diploma holder, he was trying to get some job but his mental stability was shattered by the respondent. The respondent



contested the suit by filing written statement whereby and where-under she denied all material allegations brought by the appellant against her. Marriage between the parties was admitted in the written statement. She also made counter allegation of physical and mental torture inflicted by the appellant upon her. In support of his case the appellant adduced evidence, however, he was not cross-examined by the respondent/Opposite Party.

4. The mother of the appellant deposed during the trial as PW-2 that she was cross-examined by the learned Advocate for the respondent.

5. PW-3 is a neighbour of the appellant.

6. The respondent deposed during trial as DW-1. In her evidence she stated that the appellant did not want to keep the respondent with full honour and dignity as his wife. Before marriage, he had illicit relation with another lady, namely, Pinky Kumari. Subsequently, Pinky filed a complaint on the basis of which Aurangabad Town P.S. Case No. 205/2013 under Section 376 of the IPC was registered against the appellant. Even after the decree passed in the suit for restitution of conjugal right the appellant never came to the house of the respondent to take her back to his house to stay as husband and wife.



7. From the evidence on record it is also found that the respondent filed a case under Section 498A of the IPC and under Section 3 and 4 of the Dowry Prohibition Act. She also filed another application claiming maintenance under Section 125 of the CrPC. Thus, it is on record that the relationship between the appellant and the respondent is far from being happy and cordial.

8. It is not in dispute that the appellant filed a suit for restitution of conjugal rights against the respondent under Section 9 of the Hindu Marriage Act on 19th September 2015. The said suit was registered as Matrimonial Case No. 136 of 2015 and it was decreed in favour of the petitioner on 10th July 2018.

9. Section 13(1-A) of the Hindu Marriage Act stipulates:- Either party to marriage, whether solemnized before or after the commencement of the Act, may also present a petition for dissolution of marriage by a decree of divorce on the ground and (i) there has been no resumption of co-habitation as between the parties for a period of 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 for marriage for a period of one year or upwards after passing of the decree for restitution of conjugal right in a proceeding to which they were parties.



10. The respondents did not deny that after passing of the decree of restitution of conjugal rights, the marital relationship between the parties were restored.

11. On this ground alone, the appellant is entitled to get a decree for dissolution of marriage under Section 13[(1-A) (ii)] of the Hindu Marriage Act.

12. The learned trial Judge failed to consider the relevant provisions of law while dismissing the suit. The order impugned is not sustainable and the judgment and decree of dismissal passed by the learned Principal Judge, Family Court, Aurangabad, in Matrimonial Case No. 26/2020 on 02.07.2024 is liable to be set aside. Accordingly, the instant appeal is allowed.

13. The marriage between the appellant and the respondent is declared to be dissolved by a decree of divorce. Further, the Office is directed to draw the decree of divorce at the earliest.

(Bibek Chaudhuri, J)

I agree.
Rana Vikram Singh, J:

(Rana Vikram Singh, J)

suraj/-

AFR/NAFR	NAFR
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