

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.960 of 2017

Kumari Rinku, Wife of Dr. Vikram Kumar, Daughter of Kapildeo Prasad, Resident of Murauradih, Police Station- Bihar Sharif, District- Nalanda, Present address C/o- Vijay Prasad, Mustafabad, Narayangarh, Police Station- Chandauti, District- Gaya.

... .. Appellant

Versus

Dr. Vikram Kumar Son of Dr. Laganlal Singh, Resident of Uttar Bazar, Warisaliganj, Police Station- Warisaliganj, District- Nawada.

... .. Respondent

Appearance :

For the Appellant : Mr. Ravindra Kumar Priyadarshi, Adv.
For the Respondent : Mr. Devendra Prasad Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 21-01-2020

Neither appellant nor respondent are present in person but their respective counsels are present.

2. It is informed on behalf of the appellant that due to road blockage the appellant could not reach before this court in time.

3. Learned counsel appearing for the respondent submits that he tried his best to contact with respondent but he could not succeed to contact with respondent. He further submits that he contacted the father of the respondent and informed him about the direction of this court but father of respondent did not take any



interest and even after several attempts made by him, father of respondent did not send the respondent to this court. He further submits that he does not have any instruction from the respondent and, therefore, in the aforesaid circumstance, this appeal may be disposed of on merit.

4. Heard learned counsel of the appellant as well as learned counsel of respondent and perused the impugned judgment. In our view, this appeal can be disposed of on admission stage itself.

5. The appellant is aggrieved by the impugned judgment and decree dated 20.07.2017 passed by learned Principal Judge, Family Court, Nawada in Matrimonial Case No. 228 of 2013 by which and whereunder he allowed the petition filed on behalf of the respondent under Section 9 of Hindu Marriage Act for restitution of his conjugal right with appellant.

6. The respondent filed Matrimonial Case No. 228 of 2013 under Section 9 of Hindu Marriage Act against the appellant for restitution of his conjugal right on the ground that his marriage was solemnized with appellant on 05.05.2009 according to Hindu rites and rituals and out of the aforesaid wedlock, in due course one child was born but unfortunately, the said child died immediately. However, the appellant again conceived in the month



of July 2011 but after that the appellant deserted him. The respondent further pleaded that he went to the parental home of appellant but the parents of appellant misbehaved with him and after that he several times made attempt to contact with the appellant but failed in his attempt and on 03.11.2013, when he went to the parent's home of appellant with a view to take the appellant back to his home, he was forcibly ousted from the parental home of the appellant. He further pleaded that appellant left the house of the respondent in the month of August 2011 and since then she has been living at her parental home. However, the appellant gave birth to a child. He further pleaded that the appellant has refused to lead her married life with the respondent which gave cause of action to respondent to file the suit for restitution of his conjugal right.

7. The appellant appeared before the learned Principal Judge, Family Court, Nawada on 12.01.2015 in response to the notice issued to her but she did not file any written statement and subsequently, she left pairvi as a result whereof, she was debarred from filing of the written statement and the case was proceeded ex parte.

8. The respondent led his evidence and after taking evidence of the respondent the learned Principal Judge passed the



impugned judgment on the basis of evidence available on the record.

9. Learned counsel appearing for the appellant submits that no doubt, appellant appeared before the Principal Judge, Family court, Nawada on 12.01.2015 through her learned counsel but as a matter of fact, after entrusting pairvi to her learned counsel, she went to her parental home. He further submits that concerned learned counsel of the appellant did not make proper pairvi in the case nor gave any information to the appellant about the stage of the case as a result whereof neither proper pairvi could be made nor written statement could be filed on behalf of the appellant. He further submits that it is demand of natural justice that the appellant should be permitted to contest the case.

10. On the other hand, learned counsel appearing for the respondent submits that though he does not have any instruction regarding the case of the respondent but the impugned order has been passed on the basis of evidence available before the court and, therefore, there is no need to interfere into the impugned judgment.

11. Having heard the contentions of the parties, we went through the impugned judgment. Admittedly, the impugned judgment was passed behind the back of the appellant. No doubt,



the appellant appeared before the lower court through her learned counsel but after that she could not get opportunity to contest the case as her learned counsel failed to discharge his duty. It is obvious from perusal of the impugned judgment that no written statement was filed on behalf of the appellant which goes to show that the learned counsel of the appellant did not take proper care of the case. However, in the interest of justice, we think it proper to give an opportunity to appellant to contest the case by filing her written statement before the learned court below.

12. Accordingly, this appeal is allowed on admission stage itself and the impugned judgment and decree dated 20.07.2017 passed in Matrimonial Case No. 228 of 2013 is, hereby, set aside and the case is remitted to the court of Principal Judge, Family Court, Nawada with direction to him to send fresh notices to the parties of above stated suit and after appearance of the parties, give sufficient opportunity to appellant to file her written statement and after that the learned Principal Judge, Family Court, Nawada shall proceed with the case and pass a fresh judgment in accordance with law.

13. However, it is made clear that before proceeding with the case, the learned Principal Judge, Family Court, Nawada



shall explore all the possibilities of settlement of dispute of the parties.

14. In the aforesaid manner, this miscellaneous appeal stands disposed of.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

shahzad/-

AFR/NAFR	AFR
CAV DATE	NA
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