

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.235 of 2015

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Santosh Kumar Gupta @ Bhola Babu Son of Gopal Pd Gupta Resident of
Husainabad P.S Mojahidpur Distt Bhagalpur

... .. Appellant/s

Versus

Radha Devi Wife of Santosh Kumar Gupta @ bhola Babu Resident of
Husainabad P.S. Mojahidpur District Bhagalpur Presently residing with father
Vishunu Pd. Gupta, Urdu Bazar, P.S. Kotwali Distt Bhagalpur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Sunil Kumar
For the Respondent/s : Mr. Mrityunjay Pd. Singh

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 28-09-2020

Heard learned counsel for the appellant and learned
counsel for the respondent.

The present Miscellaneous Appeal has been preferred
against the judgment dated 2.6.2015 passed by the learned
Principal Judge, Family Court, Bhagalpur in Matrimonial Case
No. 48 of 2005 whereby the matrimonial suit filed by the
respondent wife for restitution of conjugal rights under Section
9 of the Hindu Marriage Act, 1955 (hereinafter referred to as the



Act) has been decreed on contest without costs in favour of the respondent.

The factual matrix of the case is that the marriage between the appellant husband and respondent wife was admittedly performed on 20/06/1997 according to Hindu rites and customs. The respondent went to matrimonial house on 21.6.1997 and stayed there for some days and thereafter returned to her parents' house. The respondent wife again went to her matrimonial house and stayed there and subsequently the married couple were blessed with a female child in March 1998. Subsequently their relationship became strained. The appellant husband filed Marriage Case No. 17 of 2005 for annulment of marriage on the ground that the respondent wife suffered from unsoundness of mind and the consent of marriage was obtained suppressing all these facts whereas the respondent wife preferred Matrimonial Case No. 48 of 2005 for restitution of conjugal rights claiming that on the birth of female child, the behaviour of the appellant husband got changed and he started inflicting cruelty. The respondent wife was assaulted and her signature was taken on blank paper on 1.5.2004 with a threat that the appellant husband will perform second marriage. Subsequently, the issue was reconciled at the behest of the



family members and friends, but even thereafter instances of torture continued on behalf of the appellant. The respondent wife sent a legal notice to the appellant husband on 8.2.2005 against inflicting torture and for restoration of conjugal life. The same was replied by the advocate of the appellant husband on 17.2.2005 claiming that the respondent wife is suffering from mental illness. She was taken to Vellore where the doctor found her being a normal lady of compromising intelligence. As a result, the Marriage Case No. 48 of 2005 was filed under Section 9 of the Act for restitution of conjugal rights. Both, the Marriage Case No. 17 of 2005 filed by the appellant husband for annulment of marriage and Matrimonial Case No. 48 of 2005 under Section 9 of the Act, filed by the respondent wife for restitution of conjugal rights, were decided by the learned Principal Judge, Family Court Bhagalpur through a separate judgment wherein Marriage Case No. 17 of 2005 was dismissed on 2.1.2006 on the basis of the report of the doctor of RINPAS, Kanke issued vide letter no.6843 dated 24.12.2005 to the effect that the respondent wife was not suffering from any psychiatric ailment. The same Principal Judge, Family Court also dismissed the Matrimonial Case No. 48 of 2005 vide judgment dated 30.8.2006 with a concurrent finding that the appellant



husband has sufficient cause for living separately from the respondent wife. The appellant husband did not challenge the order of dismissal of Matrimonial Case No. 17 of 2005, however, the respondent wife challenged the dismissal of Matrimonial Case No. 48 of 2005 in M.A. No. 741 of 2009. A Division Bench of this Court vide judgment dated 11.4.2014 passed in the said Miscellaneous Appeal, set aside the judgment dated 30.8.2006 passed by the learned Principal Judge, Family Court, Bhagalpur dismissing the Matrimonial Case No. 48 of 2005 filed for restitution of conjugal rights by the respondent wife and remanded the matter to the learned Court below to decide the said matrimonial case afresh within a maximum period of two months. The conclusion reached by the learned Principal Judge, Family Court dismissing the marriage case filed for annulment of marriage and at the same time dismissing the restitution case filed by the respondent wife on the ground that the husband appellant had valid reason to live separately, has been found to be incongruous. The finding recorded by the Division Bench of this Court reads as follows:

“The conclusion in the suit for restitution of conjugal rights that the respondent had sufficient cause for living separate from the appellant is incongruous and incompatible with the merit



consideration in the order. Any conduct of the father-in-law was wholly irrelevant to deny restitution of conjugal right to the appellant.

In our opinion, if the Matrimonial Suit for divorce was dismissed quite obviously the parties were required to live together as man and wife for which purpose the application for restitution of conjugal rights had to be allowed. The divorce application had been rejected earlier on 02.01.2006. To reject the application for restitution of conjugal rights later on 30.08.2006, and that too by the same Court, cannot be construed as dispensing justice.”

On remand, the Matrimonial Case No 48 of 2005 revived wherein the appellant husband appeared and filed written statement on 28.11.2005, denying the accusation of leaving the society of the respondent wife and questioned the maintainability of the restitution suit, which has been filed as a counter blast to the Marriage Case No. 17 of 2005 filed by the appellant husband for annulling the marriage on the ground of unsoundness of mind of the respondent wife. The father of the respondent wife filed Complaint Case No. 405 of 2005 with accusation under Section 498A of the IPC against the appellant husband. The respondent wife after marriage stayed in the matrimonial house from 21.6.1997 and the appellant husband's family was happy with the birth of the female child. The female



child, most of the times, stayed with the father and grand father and there was no further dowry demand. The respondent wife wanted to live separately and the appellant husband was not ready to leave his parents. The respondent wife was found to be of unsound mind at CMC, Vellore, as when she was examined by the doctors, she was found to be a lady of compromising intelligence and hence a false case was lodged for inflicting torture. Hence, it was prayed that the restitution case be dismissed with costs.

On the basis of the pleadings of the parties and materials available on record the learned Principal Judge, Family Court framed five issues, which reads as follows:

- i.As to whether the suit framed is maintainable ?
- ii.As to whether applicant Radha Devi has any cause of action for the suit ?
- iii.As to whether respondent-Santosh Kumar Gupta has withdrawn himself from the company of applicant Radha Devi without any rhyme and reason, if so its effect ?
- iv.As to whether applicant Radha Devi is patient of mental illness as alleged in the written statement, if so its effect ?
- v.To what relief or relief applicant Radha Devi is entitled to ?”



The respondent wife examined six witnesses whereas the appellant husband examined seven witnesses. The documentary evidence with regard to filing of cases from both sides as well as the medical prescriptions of CMC Vellore and RINPAS, Kanke, Ranchi were exhibited. The respondent wife is still ready to resume the conjugal life.

The main issue nos. 3 and 4 whether the appellant husband has withdrawn from the company of the respondent wife without any rhyme or reason and if so, what is its impact and whether the respondent wife is of unsound mind – both have been decided in favour of the respondent wife. The finding has been recorded on both issues in paragraph no. 30 of the impugned judgment, relevant part of which reads as follows:

“.....it is crystal clear that the O.P. has deserted and withdrawn from his society the petitioner knowingly and deliberately, that matrimonial (divorce) case no. 17/2005 has already been dismissed by the learned the then Principal Judge, Family Court, Bhagalpur and what happened therefore, is not clear up to now, the learned lower court the then have been pleased to dismiss this matrimonial (Restitution) case no.48/2005 later on also and as per observations made by the Hon’ble



High Court, Patna in Misc. appeal no. 741/2009, the said two positions cannot sail together, either under the common law or under common sense of a prudent person and therefore, this court is of the humble view that the O.P. namely Santosh Kumar Gupta has withdrawn himself from the company of the applicant-Radha Devi without any rhyme and reason and said Radha Devi has been willing and ready to go to her sasural and to live with him to lead a happy conjugal life. This court is of view that the applicant-Radha Devi is not a patient of mental illness as alleged by the O.P. and she does not suffer from any mental illness of incurable and severe nature and the petitioner has proved her case to the hilt regarding the said points/issues.

Therefore, these two vital issues, i.e. issue No. III and IV are being decided in favour of the petitioner in affirmative and against the O.P. in negative.”

The above findings reflect that the appellant husband deserted and withdrew from the society of the respondent wife knowingly and deliberately even after dismissal of Marriage Case No. 17 of 2005 filed for annulment of marriage by the appellant husband and it has never been challenged in appeal, as gets reflected from the Division Bench order as quoted above passed in Misc. Appeal No. 741 of 2009. The evidence on record does not suggest that the respondent wife suffers from



any abnormality and as a result the restitution suit has been decreed in favour of the respondent wife, which is under challenge in the present Miscellaneous Appeal.

Learned counsel for the appellant submitted that the evidence on record has not been appreciated properly. CMC, Vellore's medical report suggests that the respondent wife is abnormal and in the earlier round, the restitution suit was rightly dismissed.

Learned counsel for the respondent submits that the appellant husband without any reasonable excuse has withdrawn from the society of the respondent wife. The medical prescriptions of the CMC, Vellore do not suggest abnormality. Moreover, no evidence has been led to prove such abnormality. The certificate of RINPAS, Kanke, Ranchi exhibited on record suggest that the respondent wife is absolutely normal. The Court on appearance, observed the behaviour of the respondent wife and thereafter passed the impugned order. The evidence on record completely suggest that without any reasonable cause, the appellant husband has withdrawn from the society of the respondent wife.

The only question to be decided in the present appeal is whether the appellant husband has withdrawn from the society



of the respondent wife without any reasonable excuse or whether the appellant has discharged the burden of proving the reasonable excuse ?

Section 9 of the Act reads as follows:

“9. Restitution of conjugal rights.— When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.”

The above provision suggests that either the husband or the wife can maintain application for restitution of conjugal rights if one side has, without reasonable excuse, withdrawn from the society of the other and if the Court is satisfied with regard to the truth of statements made in the petition and there is no legal ground to refuse that petition, may decree the suit. The burden of proving the reasonable excuse for withdrawal from the society of the other, lies upon the person who has withdrawn from the society of the other. In the present case, the appellant



husband has withdrawn from the society of the respondent wife, hence, the burden of proving the reasonable excuse was on him.

The term “ Reasonable Excuse” has not been defined under the Hindu Marriage Act, 1955 and the same is a question of fact and each case has to be considered independently to the facts and circumstances of the case. The petitioner by filing an application under Section 9 of the Hindu Marriage Act has to establish his aspects :-

(I) that the respondent has withdrawn from the society of his/her spouse, and

(ii) such withdrawal was without any reasonable excuse.

The only ground claimed by the appellant husband is that the wife is of unsound mind. The prescription of CMC, Vellore relied upon by the appellant husband has not been proved. Moreover, the said prescription does not suggest abnormality.

Section 13(1)(iii) of the Act provides the ground when the husband and wife can claim dissolution of marriage by a decree of divorce if the other side is 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.

Section 13(1)(iii) of the Act reads as follows:

“13. Divorce.—(1) Any marriage solemnized, 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) ...

(ii) ...

(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.”

In view of the above facts, in the present case, the appellant husband has failed to prove the mental disorder of the respondent wife of such a kind and to such an extent that he cannot reasonably be expected to live with the respondent wife.

This is not in dispute that the Marriage Case No. 17 of 2005 was filed by the appellant husband for annulment of the marriage on the ground of unsoundness of mind of the respondent, but he failed to prove the same, as a result the matrimonial suit was dismissed on contest and said dismissal



order has not been challenged till date. Hence, on the same ground, the appellant was expected to resume the conjugal life. Moreover, this fact was in cognizance of the Division Bench, when earlier Miscellaneous Appeal filed by the respondent wife against the dismissal of her application for restitution of conjugal rights, was allowed.

The matrimonial suit for annulment of marriage was dismissed by the same Principal Judge who dismissed the restitution suit on the ground that the appellant husband has sufficient cause for living separate from the respondent wife, which was found to be incongruous and incompatible with the merits of the case, the matter was remitted back. This is also not in dispute that the appellant husband has not challenged the order dated 11.4.2014 passed in M.A. No. 741 of 2009 whereby earlier judgment dated 30.8.2006 passed in Matrimonial Case No. 48 of 2005, dismissing the restitution case filed by the respondent wife has been set aside.

Hence, on the technical ground and on merits also, the learned Principal Judge, Family Court, Bhagalpur has decided the issue in the correct perspective. The appellant husband has, thus, miserably failed to prove the reasonable excuse for withdrawal from the company of the respondent wife.



Accordingly, this Court finds no merit in this appeal. It
is, thus, dismissed.

(Dinesh Kumar Singh, J)

(Arvind Srivastava, J)

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