

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.352 of 2018**

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Rajeev Kumar @ Rajiv Kumar S/o Dr. Shankar Prasad Suman, R/o Village- Sati Chaura, P.S.- Balia, District- Begusarai.

... .. Appellant/s

Versus

Arti Kumari W/o Rajeev Kumar @ Rajiv Kumar, R/o Village- Sati Chaura, P.S.- Balia, District- Begusarai. at present Arti Kumari, D/o Late Surendra Sah, R/o Village- Saksohra, P.S.- Badh, District- Patna.

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr.Rai Mukesh Sharma, Advocate  
For the Respondent/s : None

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**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**  
**and**  
**HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY**  
**CAV JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)**

**Date : 27-09-2024**

The present appeal has been directed against the order dated 12.03.2018 passed in Divorce Case No. 38 of 2017 by the Principal Judge, Family Court, Begusarai by which the prayer for divorce under Section 13(1)(1-a)(1-b) of the Hindu Marriage Act has been held to be not maintainable and dismissed.

2. Briefly stated facts of the present appeal is that the appellant's marriage was solemnized with respondent on 05.05.2013. Thereafter, respondent came with appellant at her matrimonial home where respondent lived well for five days. Thereafter, respondent's brother



and other relatives took her to parental home. It is asserted that while going to her parental home, respondent took away expensive articles, ornaments and clothes. It has been averred in the divorce petition that appellant went to matrimonial home to bring his wife back but respondent has taken excuses not to join matrimonial home at one pretext or another. Appellant tried his level best to bring respondent back but lastly respondent replied to appellant that her parents solemnized the marriage against her will and there was no match between both the family. Appellant tried to convince the respondent/wife to lead conjugal life as husband and wife but respondent was not ready to return back. It is asserted that whenever appellant went to bring the respondent/wife back, her mother tortured him mentally and reproached that appellant's house is in village, he is unemployed and dependent on his parents and appellant has no capacity to satisfy respondent economically. It was told by the respondent that her living standard is high and she could not lead her life as appellant was earning a sum of Rs. 2500- 3000/- per month and the said earning is not sufficient to maintain



respondent. The desire of respondent is that appellant should leave his house and parents and to reside at the father's house of the respondent which was totally opposed by appellant. Appellant tried to pacify the respondent but she did not ready to pay heed on the said matter. When the respondent went to her father's house after five days of marriage, appellant went to father's house of respondent, but respondent denied physical satisfaction, thereby, appellant was being deprived to lead conjugal life with his wife/respondent. It is stated in the divorce petition that on 10.05.2014, appellant went to respondent's house alongwith his father and well wisher and Panchayati was held alongwith all the dignified and intellectuals of the society but respondent as well as her mother and brother were not ready to obey the decision of the Panchayat. It is alleged that appellant, his father and relatives were misbehaved by them and thereafter appellant alongwith his father and relatives returned back. On 23.05.2014, legal notice has been sent to the respondent/wife by way of registered post but respondent neither gave reply to the legal notice nor did she come to matrimonial home till today. Even after giving legal



notice to the respondent, the appellant went to father's house of the respondent and tried to bring his wife back but appellant has been threatened to break the relationship otherwise appellant and his family members would be falsely implicated in case and their life would be ruined. It is submitted that for five days of marriage, appellant did not spend conjugal life as respondent continuously residing at her father's house. It has been asserted that finally on 11.05.2013, respondent left the appellant and went to her father's house for all the time and now appellant is left alone and he is being deprived from conjugal life and appellant faced respondent's cruel behavior. Lastly, appellant has suspicion that respondent has bad character and illicit relation with other person as a result of which conjugal life of appellant is not materialized for these many years.

3. Learned counsel for the appellant submits that neither notice has been issued to opposite party/respondent in the present case nor any issue has been framed and without examining witnesses on behalf of the appellant or opposite party, the learned Principal Judge, Family Court, Begusarai dismissed the



matrimonial suit as not maintainable.

4. In the present case, there is no need to pass any order on merit as the matter has not been decided on the basis of merit of the case. In a routine and casual manner, the Principal Judge, Family Court dismissed the matrimonial suit without following due procedure of law. From the first order sheet dated 11.05.2017 to the last order sheet dated 12.03.2018 clearly indicates the manner in which the Court has proceeded in the said case and the spirit of Family Court has not been followed by the Court. The first order sheet dated 11.05.2017 speaks about Shristedar report. On 26.05.2017 Shristedar has submitted a report regarding hearing of the matter on 12.06.2017 and transfer of Presiding Officer. On 12.06.2017 attendance has been filed on behalf of the applicant, case called out and on request of applicant case was fixed for 17.07.2017 for hearing. On 17.07.2017 attendance of applicant was filed and amendment petition was pressed which was dismissed. On 21.08.2017 attendance of applicant and petition for amendment alongwith affidavit was filed and record was ordered to be placed on 13.09.2017. On



13.09.2017 attendance was filed on behalf of the applicant and on the same date Presiding Officer was on current duty and record was ordered to be produced on 18.11.2017. On 18.11.2017 time petition on behalf of the applicant as well as attendance of opposite party was filed and on the same date, the Presiding Officer was on leave and record was ordered to be produced on 10.01.2018. On 10.01.2018, attendance was filed on behalf of the applicant and Rs. 1,000/- was given to the opposite party/respondent for traveling and staying and 27.01.2018 was fixed for hearing on admission as well as amendment petition. On 27.01.2018, attendance was filed on behalf of the applicant and on the same date Presiding Officer was on leave and record was ordered to be produced on 01.02.2018. On 01.02.2018, attendance of applicant was filed and on the same date Presiding Officer was on leave and record was ordered to be produced on 09.02.2018. On 09.02.2018, attendance of applicant was filed and on the same date Presiding officer was on leave and record was ordered to be produced on 12.03.2018. On 12.03.2018, the order has been passed in a routine manner as the Presiding Officer was continuously on leave on



18.11.2017, 27.01.2018, 01.02.2018 and 09.02.2018 and all of a sudden on 12.03.2018 the Presiding Officer jumped to the conclusion that petition was not maintainable and same was dismissed.

5. On 12.03.2018, the Principal Judge, Family Court, Begusarai has passed the order in a casual and routine manner and it reads as under:-

*“आवेदक का हाजिरी दिया गया। पुकार पर संदेह उपस्थित है। आवेदक का कथन है कि आरती कुमारी के साथ दिनांक 06-05-2013 को शादी हुई थी। घर में हमेशा झगड़ा करती थी। संदेह है कि किसी के साथ नाजायज सम्बन्ध भी है।*

*सुना। अवलोकन किया। वाद लगने का आधार पोषणीय नहीं है। अतः मुकदमा खारिज किया जाता है।”*

6. In the present case, appellant and respondent solemnized marriage on 05.05.2013 and husband/appellant faced matrimonial discord with his wife/respondent and appellant approached the court for seeking relief. The Family Court dismissed the application filed by the appellant without hearing the parties in dispute. From perusal of the record, it transpires that both parties appeared in the present case and the concerned court has not taken any effort for conciliation of the dispute of the parties which is the spirit of Section 9 of the Family Courts Act, 1984 which is reproduced



here as under:-

**9. Duty of Family Court to make efforts for settlement.-** (1) *In every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit.*

(2) *If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a settlement.*

(3) *The power conferred by sub-section (2) shall be in addition to, and not in derogation of, any other power of the Family Court to adjourn the proceedings.*

7. The Hon'ble Supreme Court in the case of **K. Srinivas Rao vs. D.A. Deepa** reported in (2013) 5 SCC 226 at para 39 held as under:-

*"39. Quite often, the cause of the misunderstanding in a matrimonial dispute is trivial and can be sorted out. Mediation as a method of alternative dispute resolution has got legal recognition now. We have referred several matrimonial disputes to*





*mediation centres. Our experience shows that about 10% to 15% of matrimonial disputes get settled in this Court through various mediation centres. We, therefore, feel that at the earliest stage i.e. when the dispute is taken up by the Family Court or by the court of first instance for hearing, it must be referred to mediation centres. Matrimonial disputes particularly those relating to custody of child, maintenance, etc. are pre-eminently fit for mediation. Section 9 of the Family Courts Act enjoins upon the Family Court to make efforts to settle the matrimonial disputes and in these efforts, the Family Courts are assisted by the counsellors. Even if the counsellors fail in their efforts, the Family Courts should direct the parties to mediation centres, where trained mediators are appointed to mediate between the parties. Being trained in the skill of mediation, they produce good results."*

8. The Principal Judge, Family Court is one of the most experienced court at the trial level and special task has been assigned to the Family Court to primarily settle the matrimonial dispute amicably by way of conciliation or mediation or through other modes which is suitable to the parties but the same principle has not been followed by the concerned Family Court as the concerned court has handled the matrimonial dispute in a very casual manner without following the basic principle required as per statutory provision. The case which is



related to the matrimonial dispute concerning annulment of marriage or divorce proceeding is a serious matter and it connects entire life of husband and wife against whom a decree for declaration of nullity or divorce has been sought. In the said matter, the court should not follow mechanical approach while passing the order.

9. The Hon'ble Supreme Court in the case of *Jalendra Padhiary vs. Pragati Chhotray* reported in *(2018) 16 SCC 773* at para 16 held as under:-

*"16. Time and again, this Court has emphasised on the courts the need to pass reasoned order in every case, which must contain the narration of the bare facts of the case of the parties to the lis, the issues arising in the case, the submissions urged by the parties, the legal principles applicable to the issues involved and the reasons in support of the findings recorded based on appreciation of evidence on all the material issues arising in the case."*

10. On 05.09.2024 the following order has been passed:-

*Prima facie, impugned judgment is liable to be set aside and it is a case of remand having regard to the fact that there is no consideration of material information.*

*2. In order to give one opportunity to the Respondent, list this*



*matter after two weeks. If there is no representation on behalf of the Respondent, matter would be decided with the available records.*

*3. Re-list this matter on 19.09.2024.*

11. In the light of discussions made above, it is clear that order passed by the Principal Judge, Family Court, Begusarai is without application of mind and in a routine and casual manner the concerned court has handled sensitive case which is related with matrimonial dispute and such order deserves to be set aside. Accordingly, the order dated 12.03.2018 passed in Divorce Case No. 38 of 2017 by the court of Principal Judge, Family Court, Begusarai is set aside. The matter is remitted back to the Family Court to hear the matter afresh by giving notice to both the parties as well as after giving ample opportunity to both parties to file their own contentions and thereafter, decide the issues on the basis of material available on record and pass reasoned order after following the due procedure of the Family Courts Act, 1984 within a period of six months from the date of receipt/production of a copy of this judgment.

12. It is necessary to sensitize the presiding



officer of Family Court as the present matter has been discussed in detail in the Judgment which has highlighted that how the Family Court has handled the said matter in a casual and routine manner and how the Family Court has acted in derogation of spirit of Family Courts Act. On the said aspect, Registrar General is requested to circulate a copy of this judgment amongst all the Presiding Officers of the Family Courts and send a copy to the Director, Bihar Judicial Academy for needful.

**(P. B. Bajanthri, J)**

**(Alok Kumar Pandey, J)**

alok/shahzad-

<b>AFR/NAFR</b>	AFR
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