

(2006) 12 JH CK 0016

Jharkhand High Court

Case No: C.M.P. No. 282 of 2005

Smt. Raj Rani Devi @ Raj Rani

APPELLANT

Vs

Rajesh Kumar

RESPONDENT

Date of Decision: Dec. 12, 2006

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151

Citation: (2007) 1 BLJR 804 : (2007) 2 JCR 106

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: V.K. Prasad, for the Appellant; Rabindra Prasad, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.

In this application purported to have been filed u/s 151 of the Code of Civil Procedure, the petitioner has prayed for recall of the order dated 18.5.2004 passed in F.A. No. 85 of 2000 and to allow her to pursue the appeal.

2. The facts of the case lie in a narrow compass:

The O.P. - Rajesh Kumar filed a matrimonial suit being M.T.S. No. 4 of 1990 in the Court of the District Judge, Hazaribagh against the appellant for dissolution of marriage and for a decree of divorce. The suit was filed by the respondent on the ground of cruelty and desertion. The suit was decreed by the Additional District Judge, Hazaribagh in terms of judgment dated 7th June, 2000. The petitioner-wife being aggrieved by the said judgment and decree preferred appeal before this Court being F.A. No. 85 of 2000. The appeal was admitted on 10.1.2001 and notices were issued fixing 22.2.2001 for hearing.

3. It appears that on 13.5.2004 an application was filed by the petitioner-appellant stating that due to personal reasons, she was not interested to pursue the appeal and accordingly sought leave of the Court to withdraw the appeal unconditionally. This Court by order dated 18.5.2004 allowed the prayer and disposed of the appeal as withdrawn. The order dated 18.5.2004 passed in F.A. No. 85 of 2000 is reproduced herein below:

Heard learned Counsel for the appellant on I.A. No. 1054/2004 at flag-X and also heard learned Counsel for the respondent.

Through this application, a prayer has been made on behalf of the appellant to withdraw this appeal.

In that view of the matter, the prayer is allowed and this appeal is disposed of as withdrawn.

The I.A. No. 1054 of 2004 stands disposed of.

4. After two months, this application has been filed by the appellant-petitioner for recall of the aforesaid order. In this application, the petitioner has narrated the facts in detail stating the reasons of withdrawal of the appeal. It is stated that after the appeal was admitted and notices were issued to the respondent, the appellant-petitioner and her family members received information from her in law's place (Sasural) in April, 2004 that that her husband and her in-laws are ready to reconcile the matter and they are agreeable to keep her in her matrimonial home. Accordingly, on 1.5.2004, the petitioner along with her father and brother went to her in-law's place where the matter was amicably settled between the parties. The parents of the petitioner-appellant left the appellant in her matrimonial home on 1.5.2004 and returned back to their village. Thereafter, the respondent-husband and his parents requested the appellant that since the matter has already been settled, she should withdraw First Appeal No. 85 of 2004 pending before this Court. On 13.5.2004, the husband of the petitioner-appellant brought her to Ranchi and they went to the Office of the conducting counsel and expressed their desire to withdraw the First Appeal. Accordingly, a petition was drafted and filed on 13.5.2004 with a prayer to permit the appellant to withdraw the appeal. As stated above, this Court by order dated 18.5.2004 disposed of the appeal as withdrawn.

5. It is stated by the petitioner-appellant that thereafter till December, 2004, things passed on peacefully and the appellant also visited her father's place with her husband. But again the respondent and his parents started showing their true colour by treating the petitioner with cruelty since the First Appeal was withdrawn. The matter became so worst that in February, 2005, the appellant was forced to come back to her parents house.

6. The appellant, then, filed a complaint case in the Court of Chief Judicial Magistrate, Nalanda stating the entire facts and the said complaint was registered

as Complaint Case No. 705C/2005. It is stated by the appellant that she is an illiterate lady and she was misled by the assurance given by the respondent to keep her in the matrimonial home. For the aforesaid reasons, she got an application filed for withdrawal of the appeal.

7. A rejoinder has been filed by the respondent-husband stating that the application for recall of the order is not maintainable because the appellant herself withdrew the appeal. He has denied all the allegations made in the application stating that in fact, the appellant has deserted him and he was compelled to file a divorce suit. The respondent has further denied the allegation that he or his parents ever contacted the appellant or her parents for reconciliation of the matter. The respondent also denied the allegation that he came with the appellant to the conducting counsel for filing an application for withdrawal of the appeal.

8. I have heard Mr. V.K. Prasad, learned Counsel appearing for the petitioner-appellant and Mr. Rabindra Prasad, Counsel appearing for the respondent-husband.

9. As noticed above, Matrimonial Title Suit No. 4 of 1990 filed by the respondent-husband was decreed on the ground of cruelty and desertion. The appellant-wife then filed First Appeal No. 85 of 2000 challenging the said judgment and decree passed in the suit on various grounds. After hearing the learned Counsel appearing for the parties, the delay in filing the appeal was condoned and the appeal was admitted for hearing on 10.1.2001. After more than 3 years, on 13.5.2004 an application was filed by the appellant for withdrawal of the appeal. In the said application, it was only stated by the appellant that she, due to some personal reasons, was not interested to pursue the appeal. A Bench of this Court by order dated 18.5.2004 simply disposed of the application by allowing the prayer for withdrawal of the appeal.

10. At the very outset, I am of the view that when an application was filed by the appellant for withdrawal of the appeal without assigning any reason, then there must have been some assurance from the side of the respondent-husband which compelled the wife-appellant to file an application for withdrawal of the appeal. In a matrimonial suit, particularly, where a decree of divorce is passed at the instance of the husband and the wife after contesting the suit also prefers an appeal, then the normal conduct of the wife would be to pursue the appeal instead of accepting the decree of divorce without any rhyme or reasons.

11. Be that as it may, the only question that falls for consideration is as to whether it is a fit case where the appeal should be heard and decided on merit by recalling the order of withdrawal of the appeal. The only stand taken by the respondent is that once an appeal is withdrawn by the appellant, then application for recall of the withdrawal order u/s 151 C.P.C. is not maintainable.

12. There is no provision in the CPC which lays down power and procedure of a Court for the purpose of recalling an order of withdrawal of the appeal. In the ordinary rules or procedure, results in injustice in any case and there is no other remedy, then they can be broken for the ends of justice.

13. It is well settled that Section 151 C.P.C. furnishes legislative recognition of an age-old and well established principle that every Court has inherent power to act ex debito justitiae to do a real and substantial justice for the administration of which it exists or to prevent abuse of the process of the Court.

14. In the instant case, as noticed above, although the appellant contested the matrimonial suit and when the decree went against her, she challenged the same by filing appeal before this Court, as held above, normal conduct of a wife cannot be to accept the decree of divorce unconditionally by taking blame on her. In such a suit, particularly, where matrimonial dispute is involved, it is fit and proper for the ends of justice to hear the parties on the merits of the case.

15. Recently, a similar question fell for consideration before the Supreme Court in the case of *Jet Ply Wood Pvt. Ltd. and Anr v. Madhukar Nowlakha and Ors.* AIR 2006 SCW 1187. The Supreme Court held:

25. The aforesaid position was reiterated by the learned single Judge of the High Court in his order dated 4th February, 2005, though the language used by him is not entirely convincing. However, the position was clarified by the learned Judge in his subsequent order dated 14th March, 2005, in which reference has been made to a bench decision of the Calcutta High Court in the case of *Rameswar Sarkar* (supra) which, in our view, correctly explains the law with regard to the inherent powers of the Court to do justice between the parties. There is no doubt in our minds that in the absence of a specific provision in the CPC providing for the filing of an application for recalling of an order permitting withdrawal of a suit, the provisions of Section 151 of the CPC can be resorted to in the interest of justice. The principle is well established that when the CPC is silent regarding a procedural aspect, the inherent power of the court, can come to its aid to act ex debito justitiae for doing real and substantial justice between the parties. This Court had occasion to observe in the case of [Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal](#), as follows: It is well settled that the provisions of the Code are not exhaustive, for the simple reason that the Legislature is incapable for contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them.

16. In the facts and circumstances of the case, I am of the considered opinion that it is a fit case where the order of withdrawal of the appeal is to be recalled and First Appeal is to be heard on merit for the ends of justice between the parties.

17. For the reasons aforesaid, this application is allowed and the order dated 18.5.2004 passed in F.A. No. 85 of 2000 is recalled. Let F.A. No. 85 of 2000 be listed for hearing on merit.