

(2016) 10 JH CK 0057

JHARKHAND HIGH COURT

Case No: F.A. No. 126 of 2013 with I.A. No. 4445 of 2015 with I.A. No. 4446 of 2015
(Against the Judgment and Decree dated 10.5.2013, passed in Title Matrimonial Suit No. 42 of 2009, by Mr. Kaushal Kishore Jha No. 1, learned Principal Judge, Family Court, Bokaro)

Sunita Devi

APPELLANT

Vs

Mr. Prabhash Chandra Mahto

RESPONDENT

Date of Decision: Oct. 18, 2016

Acts Referred:

- Hindu Marriage Act, 1955 - Section 13

Citation: (2017) 2 AIRJharR 136 : (2017) 1 JBCJ 234 : (2017) 1 JCR 450 : (2016) 4 LJLR 715

Hon'ble Judges: Mr. H.C. Mishra And Mr. Dr. S.N. Pathak, JJ.

Bench: Division Bench

Advocate: Mrs. Vandana Singh, Advocate, for the Respondent; Mr. Arvind Kumar Singh, Advocate, for the Appellant

Final Decision: Disposed Off

Judgement

1. Heard learned counsel for the appellant as also learned counsel for the sole-respondent.
2. The appellant is aggrieved by the Judgment and Decree dated 10.5.2013, passed by the learned Principal Judge, Family Court, Bokaro, whereby the Title Matrimonial Suit No. 42 of 2009, filed by the sole respondent herein, for dissolution of marriage by a decree of divorce, under Section 13 of the Hindu Marriage Act, 1955, has been decreed by the Court below.
3. The Judgment under appeal shows that the marriage between the parties had taken place on 10.5.1996 at Hazari Basti, P.S.-Gomia, District-Bokaro, as per Hindu rites and customs. After the marriage, the appellant wife went to her matrimonial home, where she stayed only for a few days and she again went to her matrimonial home after the death of the Bhabhi of the sole respondent herein, but her attitude

was not amicable and again after few days, she returned back. A Panchayati was also held for settling the dispute between the parties, but the matter could not be settled. A criminal case for the offence under Section 498-A of the Indian Penal Code was also filed by the appellant wife against her husband. The husband brought the Matrimonial Suit in the Court below for dissolution of marriage by a decree of divorce, under Section 13 of the Hindu Marriage Act, which was registered as Title Matrimonial Suit No. 42 of 2009.

4. The record shows that upon notice, the appellant appeared in the Court below on 16.12.2009, but she did not appear for reconciliation nor she filed any written statement in spite of giving several opportunities to her, and ultimately she was debarred from filing the written statement vide order dated 10.1.2013 and the case was fixed for evidence. The sole respondent herein, has adduced four witnesses, i.e., P.W.-1 Rajan Mahto, P.W.-2 Shyam Sunder Mahto, P.W.-3 Subhash Chandra Mahto, who were the relatives of the husband and P.W.-4 Prabhash Chandra Mahto, the husband himself, in the Court below. These witnesses supported the case of the husband. P.W.-1 Rajan Mahto and P.W.-2 Shyam Sunder Mahto were not even cross-examined on behalf of the appellant in the Court below. P.W.-3 Subhash Chandra Mahto and P.W.-4 Prabhash Chandra Mahto were cross-examined on behalf of the appellant, but even in their cross-examination, nothing could be taken by the appellant to discredit their testimony. Accordingly, the learned Principal Judge, Family Court, Bokaro, by the Judgment dated 10.5.2013, decreed the suit for divorce and directed the husband of the appellant, who is the sole-respondent herein, to pay Rs. 1,00,000/- to the appellant, as permanent alimony and future maintenance within one month from the date of the order.

5. It is the case of the sole-respondent that the respondent had already deposited the amount of Rs. 1,00,000/- in the Court below on 24.5.2013, but the said amount has not yet been taken by the appellant from the Court below.

6. The record shows that two interlocutory applications, being I.A. Nos. 4445 and 4446 of 2015 were filed by the appellant in the present appeal, by which, the prayer had been made for enhancement of the amount of permanent alimony and future maintenance as well as for payment of the arrears of amount of interim maintenance. It appears from the order dated 15th of March, 2016, passed by this Court in I.A. No. 4446 of 2015 that a direction was passed upon the sole-respondent to deposit Rs. 60,000/- before this court, but the said order has not been complied with. Thereafter by order dated 10th May, 2016, the LCR was called for from the Family Court, Bokaro. The lower Court record has since been received, which shows that the amount of Rs. 1,00,000/-, which had been allowed as permanent alimony to the appellant-wife, had already been deposited by the sole-respondent on 24.3.2013 itself, but the said amount had not been withdrawn by the appellant-wife.

7. Learned counsel for the appellant has submitted that the impugned Judgment and Decree passed by the Court below is absolutely illegal, inasmuch as, the

appellant was not given sufficient opportunity to file her written statement as also to adduce the evidence in the Court below and the Judgment and Decree has been passed without giving sufficient opportunity to the appellant-wife for filing the written statement and adducing evidence. It is also submitted that in the Court below, one application was also filed for transferring the case to the Camp Court at Tenughat, but the Family court decided the said case at Bokaro itself. Learned counsel, accordingly, submitted that the impugned Judgment and Decree, cannot be sustained in the eyes of law.

8. Learned counsel for the sole respondent, on the other hand, has opposed the prayer and has pointed out from the Lower Court Record, that upon notice, the appellant wife appeared in the court below on 16.12.2009, thereafter several steps were taken for conciliation between the parties, in which the appellant-wife was mostly absent. Several opportunities were given to her for filing the written statement even by way of last chance, which were extended from time to time, but in spite of that the appellant wife did not file any written statement for about four years, and ultimately by order dated 10.1.2013, she was debarred from filing written statement. Thereafter, the witnesses were examined and the suit has been decreed. It is pointed out by learned counsel for the sole-respondent that in any event, it is a clear case, in which, the parties are continuously living separately at least since the year 1998-99 itself, which clearly shows that the marriage has irretrievably broken down between the parties. Learned counsel, has accordingly, submitted that there is no illegality in the impugned Judgement passed by the Court below, whereby the marriage between the parties has been dissolved due to continued desertion by the wife.

9. Having heard learned counsels for both the sides and upon going through the record, we find force in the submission of learned counsel for the sole-respondent that the appellant-wife had appeared in the court below upon notice on 16.12.2009, but thereafter she did not take any interest in the case. The order-sheet of the Court below shows that the appellant-wife had appeared in the Court below in person on 16.12.2009 and thereafter the case was fixed for several dates for filing the written statement. Apart from several other dates on which the appellant was granted adjournment by the Court below to file her written statement, on 4.7.2012, 6.8.2012, 13.9.2012 and 29.11.2012 time was allowed to the appellant-wife for filing written statement by way of last chance on all these dates, which was extended to the subsequent dates as above, but the appellant did not avail these opportunities and ultimately the Court below was left with no option but to debar the appellant from filing the written statement by order dated 10.1.2013. Prior to that steps for reconciliation were also taken by the Court below, but the appellant absented herself and ultimately the effort of reconciliation failed. The matter was also referred to Lok Adalat, for settlement of the dispute between the parties, which effort also failed. Thereafter four witnesses were also examined on behalf of the sole-respondent in the Court below, out of whom P.W.-1 Rajan Mahto and P.W.-2

Shyam Sunder Mahto were not even cross-examined on behalf of the appellant wife in the Court below. P.W.-3 Subhash Chandra Mahto and P.W.-4 Prabhash Chandra Mahto, who is the sole respondent herein, were cross-examined in the Court below, but nothing could be pointed out by the learned counsel for the appellant from their cross-examination, so as to discredit their testimony. These witnesses have proved the case of the sole respondent, who was the petitioner in the Court below. The Court below on the appraisal of evidence, decreed the Suit, dissolving the marriage between the parties and directed the sole-respondent to make the payment of Rs. 1,00,000/- as permanent alimony to the present appellant. Admittedly, this money has not yet been withdrawn by the appellant, though the money was deposited in the Court below on 24.5.2013 itself.

10. In view of the aforementioned discussions, we are of the considered view that there is no illegality in the impugned Judgment and Decree passed by the Court below, dissolving the marriage between the parties, by the decree of divorce. Even otherwise, since the parties are living separately since the year 1998-99 itself, and the appellant wife did not take due interest in the reconciliation proceedings in the Court below, we are of the considered view that this is a case of irretrievable breakdown of marriage between the parties, and there is no scope for any interference in the impugned Judgment and Decree dated 10.5.2013, passed by the learned Principal Judge, Family Court, Bokaro, in Title Matrimonial Suit No. 42 of 2009.

11. We do not find any merit in this appeal, and the same, is accordingly, dismissed.

12. Since the appellant has not withdrawn the amount of Rs. 1,00,000/-, which has been deposited by the sole-respondent in the Court below on 24.5.2013 itself, the appellant is given the liberty to withdraw the said amount. The appellant is also given the liberty to file appropriate application, under Section 25 of the Hindu Marriage Act, 1955, for enhancement of the amount of maintenance, if so required. The aforesaid interlocutory applications also stand disposed of, accordingly.