

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No. 204 of 2018

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Sonu Kumar, Son of Sita Ram Bhagat, Resident of Village-Bhagwanpur
Bochahan, P.S. Bochahan, District-Muzaffarpur.

... .. Appellant/s

Versus

Rina Devi, Wife of Sri Sonu Kumar, D/o- Shri Mishri Lal Bhagat,
Resident of Village-Dhamaur, P.O. Dhamaur, P.S.-Katra, District Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Shyam Sunder Pandey, Advocate
For the Respondent/s : None

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

Date : 19-07-2023

1. The present appeal has been preferred against the Judgment dated 19.12.2017 passed by Ld. Principal Judge, Family Court, Muzaffarpur in Matrimonial (Divorce) Case No. 27 of 2017 whereby learned Family Court has dismissed the Matrimonial Case filed by the Appellant herein for divorce under Section 13 of the Hindu Marriage Act.

2. The Appellant/Plaintiff has prayed for dissolution of marriage on the ground of cruelty against the wife-respondent. It also transpires that despite service of notice, the respondent-wife did not appear before the Family Court and hence, she was proceeded *ex parte*. However, the Ld. Family Court dismissed the Matrimonial Petition of the Appellant/Plaintiff, *ex parte*, finding that the



petitioner has failed to prove the allegation of cruelty allegedly committed by the respondent-wife against him.

3. The case of the appellant/plaintiff as per the pleading is that marriage between the appellant and the respondent was solemnized on 12.06.2015 at village Dhanaur, district- Muzaffarpur by Hindu rites and customs and after marriage, the respondent-wife joined the appellant-husband at his matrimonial home and after living at the matrimonial home for 1-2 months, went back to her parental house. It is further alleged that during her stay at matrimonial home, her conduct was not proper towards his parents and other members of his family. It is also alleged that the respondent-wife does not have mental balance and she refused to cohabit and consummate the marriage saying that she has not married for making a family but to break her virginity. It is also alleged that during her stay at her matrimonial home some people from her village used to meet her in a closed room despite objections from the family members of the appellant. When she was asked about the meeting by family members, she used to abuse them saying that they had no business to know about the said meeting. It is also alleged that he visited the parental house of the wife several times to take her back to his matrimonial home but she refused to join him at the matrimonial home. It is further alleged that during



her stay at parental home, she informed the appellant-husband about her ill health and asked him for money for treatment. Hence, the appellant-husband took the respondent-wife to Dr. Smt. Vidya Singh at Muzaffarpur for her treatment. As per the advice of the said doctor, ultrasonic test of her uterus was done on 29.07.2016 and as per the report, the respondent-wife has cyst in her uterus and she is not having eggs in the uterus and therefore, there is least possibility of her becoming a mother. However, as per the pleading, the petitioner-husband is a young man of 24 years of age having good health needing cohabitation and having desire to become a father but the respondent-wife is neither willing to cohabit nor is any possibility of her becoming a mother. It is further alleged that she always used to demand money and on refusal she used to threat to commit suicide and implicate the whole family of the appellant in dowry case to send them to jail. Hence, the appellant and his family members do not feel safe to keep her at matrimonial home.

4. Despite service of notice, the respondent-wife preferred not to appear before the Family Court. Hence, she was proceeded *ex parte*.

5. The appellant/plaintiff examined two witnesses including himself before the Family Court in support of his petition for divorce. The appellant/plaintiff has examined himself as PW-1



deposing that during her stay at the matrimonial home, the wife refused to cohabit with him saying that she has not married for family but for breaking her virginity and she went back to her parental home after two months and despite several visits by the appellant to her parental home, she refused to come back to the matrimonial home and to establish physical relationship with him. It is also deposed that as per desire of the respondent-wife she was taken to Dr. Smt. Vidya Singh for her treatment and ultrasonic test was conducted on the respondent-wife. It is also deposed that respondent-wife has cyst in her uterus and she has no regular menstruation and there is no possibility of her becoming mother in future and he is 24 years old young man and wants to have child by another marriage.

6. PW-2-Sitaram Bhagat is father of the appellant and he has supported the statement as made by the appellant.

7. Learned counsel for the appellant submits that learned Family Court has failed to properly appreciate the evidence of the appellant and erroneously found that the appellant has failed to prove allegation of cruelty committed by respondent-wife against the appellant-husband and dismissed the divorce petitioner *ex parte*. He refers to evidence of the witnesses and submits that it has been deposed by the appellant-husband and his father that during her stay



at her matrimonial home, the respondent-wife was not behaving with the family members of the appellant in a proper manner, which amounts to cruelty. He also submits that refusal to cohabit is also a form of cruelty against appellant-husband.

8. No submission was made on behalf of the appellant in regard to making desertion as a ground for divorce. Even otherwise, It is found that the marriage was solemnized on 12.06.2015 and divorce petition was filed on 01.04.2017 i.e within two years of marriage and respondent-wife had lived in her matrimonial home for two months. As such, ground of desertion is not made out because as per Section 13(1)(b), desertion must be for a continuous period for not less than two years immediately preceding the present petition.

9. Ld. Counsel for the respondent who has filed *Vakalatnama* in the appeal has preferred not to appear before the Court despite Court notice. Hence, there is no submission on behalf of the Respondent.

10. We perused the case record and considered the submission advanced by Ld. Counsel for the appellant. After analysis of the total evidence on record as adduced by the appellant-husband, it is found that no specific allegation of behavioral misconduct amounting to cruelty has been made in his



pleading or evidence with reference to date, place and nature of the cruelty except the allegation that she refused to cohabit with him. However, such allegation and deposition regarding refusal of cohabitation by wife with the appellant-husband does not appear to be reliable, in view of the finding that even after return of the Respondent-wife to her parental home, the Appellant-husband was in touch with her and that is why when she fell ill, she informed the appellant-husband and the appellant-husband took her to a doctor for treatment. We also find that appellant-husband did not take any legal step for restitution of conjugal rights by filing any petition under Section 9 of the Hindu Marriage Act. As such allegation of appellant-husband regarding refusal of cohabitation does not hold ground.

11. From the pleading and evidence on record, it also appears that when the husband-appellant came to know, after medical examination of the wife-respondent, that the respondent-wife is having cyst in her uterus and she is unable to bear child, the husband wants to divorce her to get remarried with another lady so that he can have child. Such motive of the appellant-husband is clearly apparent from the pleading and evidence. Here, it is relevant to mention that developing any disease during the continuation of marriage is not within the control of any spouse. In such a situation,



the other spouse has a marital duty to co-operate and bear with it and help the other spouse. It is also worth mentioning that inability to bear a child is neither impotence nor any ground for dissolving the marriage. Such possibility of inability to bear a child may be part of marital life of anybody and parties to a marriage may resort to other means for having a child, such as, adoption. Divorce is not provided as per the Hindu Marriage Act in such circumstances.

12. Hence, we find that there is no merit in the present appeal warranting any interference in the impugned judgment. The Family Court has rightly dismissed the matrimonial case of the appellant seeking divorce. The present appeal is dismissed accordingly, affirming the impugned judgment.

(Jitendra Kumar, J)

(P. B. Bajanthri, J)

Skm/chandan/-

AFR/NAFR	NAFR
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