IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.936 of 2016

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Md. Naushad Hussain Son of late Md. jalil, Resident of villageP.O-Bithauli,P.s-Baheri,District-Darbhanga.

... ... Appellant/s

Versus

1. Shahida Khaton and Anr Wife of Md. Naushad and Daughter of Abdul Hamid, Resident of village-Bithouli,P.s.-Baheri,District-Darbhanga,At present Residing with father at village jai Kishanpur,p.o-Bairampur,P.s-Biroul,District-Darbhanga
2. Abdal Hamid Son of Rahim Resident of village-jai Kishunpur,P.o-Biraul,District-Darbhanga.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr.Bishwanath Prasad Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE S. B. PD. SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. B. PD. SINGH)

Date : 02-09-2025

Heard the parties.

2. The present appeal has been filed under Section 19(1) of the Family Court Act, 1984 impugning the judgment and decreed dated 25.06.2016 passed by learned Principal Judge, Family Court, Darbhanga in Matrimonial Case No. 209 of 2012 filed under Section 281 of the Muslim Law, whereby learned Family Court has dismissed the matrimonial suit filed on behalf of the appellant-husband for restitution of conjugal rights with the

respondent-wife.

3. The case of the appellant as per petition filed before the Family Court is that the marriage of the appellant with the respondent was solemnized according to the *Muslim Shariyat Law* in the year, 2003. The marriage was consummated and out of the wedlock, three child were born. It is alleged by the appellant that the respondent fled away with the 3rd child, who, at that time was aged about three years from her matrimonial house and when the appellant went to his *Sasural* for *Rukshati* of his wife, the respondent and other family members refused to the *Rukshati.* The respondent is a quarrelsome lady and she used to quarrel with the appellant and other in-laws family members on petty issues. The two minor children are living with the appellant and it has become difficult for him to take care of their children in the absence of their mother. Hence, he has filed the present restitution petition.

4. In response to the summons/notices, the respondent appeared and filed her written statement. In her written statement, she has disputed and denied the claim of the appellant. She has stated that after marriage, she went to

her *Sasural* with the appellant where she was tortured, abused and assaulted by the appellant as well as other in-laws for not fulfillment of dowry demand. Even the birth of three children did not change the habit and attitude of the appellant and other in-laws family members. The respondent always tried to lead a conjugal life with the appellant but it was the appellant who always used to assault the respondent without any fault or reason. While assaulting, the appellant became wild and he does not think whether respondent is dead or alive. The appellant himself ousted the respondent from her matrimonial house. The life of the respondent is always in danger at her matrimonial house. In the above circumstance, the respondent does not want for restitution of conjugal rights with the appellant. Hence, the petition filed by the appellant Under Section 281 of Muslim Law is fit to be dismissed.

5. The Principles of Mahomedan Law clearly defines the circumstances under which the restitution of conjugal rights will be made applicable. Section 281 of the Principles of Mohomedan Law reads as under:-

“281. Suit for restitution of conjugal

> *rights (1) Where a wife without lawful cause ceases to cohabit with her husband, the husband may sue the wife for restitution of conjugal rights.*

6. In the present case, the respondent-wife herself annexed attested copy of the TALAKNAMA certificate issued by USTAJ MADARSA RAHMANIYA, SUPAUL, BIRAUL, DARBHANGA which clearly suggests that appellant-husband has divorced the respondent-wife. She also does not want to live with the appellant-husband due to his cruel behaviour. Para 12 of the impugned order reads as under:-

> *"12.Apart from this in support of allegation imposed by the Opposite party/wife against her husband specifically attributed in the pleading of her Written Statement dated-19.7.2013 together with petition dated-7.2.2014, attested copy of TALAKNAMA Certificate, issued by USTAJ MADARSA RAHMANIYA, SUPAUL, BIRAUL, DARBHANGA, has been filed by the Opposite Party/wife to the case. The contents mentioned therein clearly*

consolidate the allegation and attitude of the applicant which shows that the situation of the family status or atmosphere is not healthy as well as habitable for harmony of life of both spouse. It is worthwhile to mention here that, it is not required to discuss more at this stage in context of attested copy of TALAKNAMA issued by WASLAM KUMWARAK TULLAH KU TAW(KAJI).USTAJ MADARSA RAHMANIYA, SUPAUL, BIRAUL (DARBHANGA), however, the document filed on behalf of the Opposite party/wife cannot be otherwise overlooked, anyhow it flashes the bitter relation of both the spouse."

7. The Muslim Laws clearly stipulates that once Talaq is pronounced and it took a considerable time for it to be restored, the only option for a divorced couple to lead a conjugal life is remarriage. The Principles of Mohomedan Law clearly defines the remarriage of divorced couple. Section 336(5) of the Principles of Mohomedan Law reads as under:-

"(5) Remarriage of divorced couple.- (i) Where the husband has repudiated his wife by three pronouncements [311(2) and 311(3)(i)], it is not lawful for him to marry her again until she has married another man, and the latter has divorced or died after actual consummation of the marriage. The presumption of marriage arising from an acknowledgment of legitimacy (267) does not apply to a remarriage between divorced persons unless it is established that the bar to remarriage created by the divorce was removed by proving an intermediate marriage and a subsequent divorce after actual consummation. Even if a remarriage between the divorced persons is proved, the marriage is not valid unless it is established that the bar to remarriage was removed, the mere fact that the parties have remarried does not raise any presumption as to the fulfillment of the above conditions. A marriage without fulfillment of the above conditions is irregular, not void.

(ii) In all other cases, the divorced parties may remarry as if there had been no divorce either during the iddat or after

its completion.

8. Considering the fact that *Talaq* has already been performed between the parties and in the entire evidence, the appellant-husband has not denied the aforesaid assertion of the respondent and the respondent herself does not want to continue matrimonial relationship with the appellant-husband, we are not inclined to interference with the impugned judgment. The Family Court has rightly dismissed the Matrimonial Case No. 209 of 2012 filed on behalf of the appellant-husband.

9. The present appeal is dismissed accordingly, affirming the impugned judgment.

(S. B. Pd. Singh, J)

(P. B. Bajanthri, ACJ)

Shageer/-

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