

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.454 of 2019

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Mukesh Kumar Sah S/o Late Baigu Sah Resident of Sahwajpur,PS Hajipur
Sadar,Po Harauli,Dist.Vaishali

... .. Appellant/s

Versus

Nitu Devi W/o Mukesh Kumar Sah,D/o Dip Narain Sah Resident of Village
Kudhani,PO Kudhani,PS Kudhani,Dist.Muzaffarpur

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Arun Kumar Prasad, Advocate

For the Respondent/s : Mr.Rajive Ranjan Singh, Advocate

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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 : 23-09-2024

Re:- I.A. No. 01 of 2019

I.A. No. 01 of 2019 has been filed for
condonation of delay of about 43 days. For the reasons stated in
application read with the affidavit delay of about 43 days in filing
M.A. No. 454 of 2019 stands condoned.

2. Accordingly, I.A. No. 01 of 2019 stands
allowed.

3. With the consent of the respective counsels
M.A. No. 454 of 2019 is taken up for final disposal.

4. The present appeal has been directed against
the impugned judgment dated 22.05.2018 passed in Restitution
Case No. 225 of 2012 whereby and whereunder petition filed by



the appellant for restitution of conjugal right has been dismissed by the Principal Judge, Family Court, Vaishali at Hajipur.

5. Briefly stated fact of the appellant's case is that after marriage respondent came to her sasural and began to live and after staying few days in sasural, respondent went to her father's house without the consent of the appellant and his family members. It is averred in the petition that during the course of living in sasural, respondent did not live as wife and despite being best effort, respondent was not ready to lead conjugal life. It is alleged that respondent always demanded money from the appellant and when it was found that appellant was unable to fulfill the demand, on that score, respondent threatened to implicate appellant in a false case. On 10.01.2011, respondent went to her father's house with all ornaments. It is further asserted in the petition that from January, 2011 to August, 2012 appellant made several efforts to bring respondent back but respondent was not ready to come and lastly on 01.09.2012, respondent refused to come at her matrimonial home whereas appellant is ready to live with his wife with all respect and dignity. It has been stated that the cause of action arose on 01.09.2012 when respondent refused to join appellant.

6. Written statement has been filed on behalf of the respondent where it has been mentioned that suit as framed is not



maintainable and appellant has no cause of action for filing the case of suit and cause of action as alleged is false and concocted and the respondent submitted the following facts:-

(i) marriage was solemnized on 23.05.2002 and on next date the bride went to village Sahbajpur, Patwa where marriage was consummated.

(ii) At the time of marriage father of the respondent gave Rs. 80,000/-(eighty thousand rupees) in cash and ornaments. After marriage respondent has felt that appellant had intimacy with his bhabhi and appellant expected his wife to live which was very irritating for the respondent and respondent was ill-treated mentally. In the year 2003, respondent was pregnant and it was miscarriage for want of proper care and medication and appellant did not take his wife to doctor rather he started maintaining distance from his wife and appellant followed the suggestion of his bhabhi. The intention of appellant is to live elsewhere outside the village and respondent had to look after her aged mother-in-law at her sasural alone and it was informed later on that appellant settled in Obra, Uttar Pradesh. Respondent tried her best to join her husband at Obra, Uttar Pradesh but she was insulted. Appellant tried to live at Sasural with her mother-in-law getting maintenance from the landed property but she was driven out of the house as respondent protested her husband and since



then the respondent was living with her parents at her father's house. Respondent filed a maintenance case before the Principal Judge, Muzaffarpur bearing case No. 46/13 in which the appellant appeared and the Court tried to reconcile the matter on 15.04.2014 but of no avail. The Family Court proceeded with case and allowed Rs. 3,000/-(three thousand) per month as interim maintenance since 17.12.2013. Appellant preferred Criminal Miscellaneous No. 6010/2014 against the order dated 29.05.2014. The Court referred the matter to mediation centre. The mediation process failed but the appellant proposed for one time settlement on which reply of respondent is still awaited but the appellant ignored to disclose the fact of filing of this case before the Hon'ble High Court also. Respondent has denied the allegation that marriage was not consummated as she has stated that respondent never left companion of appellant. It was the appellant who deserted respondent at the behest of his bhabhi. Appellant left the matter pending before the Court even after proposing one time settlement and appellant left her at his native village to lead her life at the mercy of the God and never took respondent alone at Obra, Uttar Pradesh. It is asserted in the written statement that respondent never left the appellant's house out of her free will rather respondent was driven out of the house. Now, the respondent lost her heart and faith also keeping in view the attitude



of the appellant who is cunning and shrewd fellow on whom no one can rely who has any kind of self respect. Appellant can not take advantage of his own wrong and the relief for restitution of conjugal right cannot be allowed in favour of the appellant against the respondent.

7. Learned counsel for the appellant submits that the concerned court has failed to appreciate and consider that the appellant tried his best effort for her satisfaction but she was not ready for the same. The learned Court has also not taken into account that the respondent always used to demand money but appellant could not be able to fulfill the demand and respondent always used to threaten appellant to implicate him in false case and while passing judgment under Section 9 of Restitution of Conjugal Right, the concerned Court has not appreciated that respondent mainly used to live in her father's house without consent of appellant despite the best effort taken by appellant to bring the respondent at her matrimonial house and she refused to come at matrimonial home to live with her husband. Learned Court has not appreciated to consider the evidence of P.W. 2 who denied the illicit relation of appellant with his bhabhi. The allegation made by respondent was totally denied by appellant and the said aspect was not taken into account by the concerned Court while passing the impugned judgment and petition filed by the



appellant under Section 9 for Restitution of Conjugal Right has been dismissed. Hence, the present M.A.

8. The appellant has proved with the material available on record that respondent had deserted him living separately from the appellant for a long time. The concerned Court has failed to appreciate and consider the evidence of P.W. 1 specially and P.W. 4 who has deposed that respondent is living separately for six and half years with her husband. In the light of the aforesaid facts and circumstances of the case, appellant's petition under Section 9 of Hindu Marriage Act should have been allowed and decreed. The said aspect has not been taken into account by the concerned Court and hence, the judgment dated 22.05.2018 passed by learned Principal Judge, Family Court, Vaishali at Hajipur under Section 9 of Hindu Marriage Act for restitution of conjugal right is fit to be set aside. Appellant's one leg is half cut as such appellant has produced his photograph and the said aspect was not considered by the concerned Court in the judgment and the same is fit to be set aside. Respondent has not cooperated in the conjugal life and hence, marriage has not been consummated.

9. Learned counsel for the respondent submits that from the perusal of petition filed under Section 9 of Hindu Marriage Act, it is clear that even the date of solemnization of



marriage has not been mentioned and the respondent has categorically and specifically stated that respondent was residing at her village at her matrimonial home. Appellant has been residing at Obra, Uttar Pradesh and appellant has not taken pain to bring his wife where the appellant was living. Appellant has categorically stated that he has illicit relation with his Bhabhi and suggestion and advice given by the Bhabhi was taken into account and the conduct of the husband is so irritating that the respondent was not in a position to lead the conjugal life with her husband. In written statement she has categorically stated that the marriage took place in the year 2002 and marriage is consummated. It is prudently and pragmatically not possible for any couple whose marriage has taken place in 2002 as asserted in written statement and Restitution of Conjugal Right has been filed by the appellant/ husband in 2012. If consummation has not taken place between both the parties, how the appellant/ husband has kept silent for so many years since the date of solemnization of marriage and purposefully appellant has not mentioned the particular date of marriage. Opposite Party/Respondent got pregnant in the year 2003 but miscarriage took place for want of proper care and medication. The petition does not speak about miscarriage that has been taken place and what efforts have been taken by the appellant to protect the miscarriage, has also not been mentioned



in the petition. The petition under Section 9 of Hindu Marriage Act is vague in the sense that the petition does not speak specific about the date of marriage and just to make false cause of action, appellant has shown that lastly respondent/wife has not joined the matrimonial home since 01.09.2012. The respondent has reason to believe that she was being ill treated while at her matrimonial home and for the said reason she has stated that the appellant has illicit relation with his bhabhi and appellant followed the suggestion given by his bhabhi. Appellant is not cooperating to bring his wife to the place where the appellant is residing. Respondent has already stated that she is residing at her matrimonial home where she is serving the father of the appellant. In this way, judgment passed by the Principal Judge, Family Court, Vaishali at Hajipur is just and legal and the same is passed on the basis of material available on record.

10. In the light of pleadings of both parties, the crux of the matter is that whether respondent has deserted her husband living separately without any reasonable cause or not?

11. From the side of the appellant, four witnesses have been examined. They are PW-1 Mukesh Kumar Sah, PW-2 Ram Udar Sah, PW-3 Ganesh Sah and PW-4 Ram Naresh Sah. From the side of respondent/opposite party, three witnesses have been examined. They are OPW-1 Kumari Nitu, OPW-2 Manoj Kumar



Sah and OPW-3 Sikandar Sah.

12. It is necessary to discuss the relevant statutory provision of Section 9 of the Hindu Marriage Act for restitution of conjugal right and it reads as under :-

9. Restitution of conjugal right- when either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

Explanation- Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.

From bare perusal of said statutory provision, it is clear that any of the party may seek relief for restitution of conjugal right and court on being satisfied with the truth of statement made in petition may pass decree of restitution of conjugal right accordingly. There is an explanation in which it has been stipulated that the person who has taken reasonable excuse for withdrawal from the society then the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.



13. In the light of above discussed statutory provision, it is necessary to analyze the evidence adduced by PW-1/appellant. During course of adducing evidence in trial he has admitted that he married on 23.05.2002 with respondent according to Hindu customs and rites and respondent lived as wife for eight years. It has been specifically asserted during examination in chief that she is living at her father's house since 2011. PW-2 and PW-3 are reiterating the version of PW-1 which is like that of a parrot version.

14. OPW-1/ respondent has reiterated the version of written statement in her evidence and she has stated that she was being assaulted for not bringing sufficient dowry and appellant has illicit relation with his bhabhi and her husband did not lead conjugal life. She has stated that her husband used to spent time with his bhabhi.

15. From perusal of impugned judgment passed by the Family Court, it is crystal clear that concerned court has given finding that the respondent has reason not to live with her husband and it has been clarified that the conduct of appellant/husband is not conducive towards the respondent/wife and he always maintained distance from the respondent/wife and wife faced irritating attitude at the behest of her husband and the reasonable threat of her life while living with appellant/husband cannot be



denied. The respondent herself stated that she cannot live with her husband as she seeks one time settlement so court cannot ask the respondent/wife to go to matrimonial home and lead a conjugal life with her husband as respondent has been neglected by the appellant/husband.

16. The appellant has taken plea that he suffered injury in the leg but the said fact has not been found any place in the pleadings of petition filed under Section 9 of Restitution of Conjugal Right and in the light of various judicial pronouncements, it is settled principle of law that the evidence adduced beyond the pleadings is liable to be rejected and cannot be considered for grant of relief as prayed for by the petitioner.

17. Hon'ble Supreme Court in para 12 of **National Textile Corporation Ltd. Vs. Nareshkumar Badrikumar Jagad & Ors.** as reported in (2011) 12 SCC 695 after referring to **Trojan & Co. Vs. Nagappa Chettiar** as reported in AIR 1953 SC 235, **State of Maharashtra Vs. Hindustan Construction Co. Ltd.** as reported in (2010) 4 SCC 518 and **Kalyan Singh Chouhan Vs. C.P. Joshi** as reported in (2011) 11 SCC 786, observed that pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial. Therefore, the pleadings are more of help to the court in narrowing the controversy involved and to inform the parties concerned to the question in



issue, so that the parties may adduce appropriate evidence on the said issue. It has been further observed that as a settled legal proposition, relief not founded on the pleadings should not be granted. A decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ.

18. In **Prakash Rattan Lal Vs. Mankey Ram** as reported in **ILR (2010)III Delhi 315**, Hon'ble Delhi High Court has referred to **Ram Sarup Gupta by LRs Vs. Bishun Narain Inter College** as reported in **(1987) 2 SCC 555** and **Harihar Prasad Singh Vs. Balmiki Prasad Singh**, as reported in **(1975) 1 SCC 212** and observed in para 4 of the judgment that the sole purpose of pleadings is to bind the parties to a stand. When the plaintiff makes certain allegations, the defendant is supposed to disclose his or her defence to each and every allegation specifically and state true facts to the court and once the facts are stated by both the parties, the court has to frame issues and ask the parties to lead evidence. It is settled law that the parties can lead evidence limited to their pleadings and parties while leading evidence cannot travel beyond pleadings. If the parties are allowed to lead evidence beyond pleadings then the sacrosanctity of pleadings comes to an end and the entire purpose of filing



pleadings also stand defeated. The other purpose behind this is that no party can be taken by surprise and new facts cannot be brought through evidence which have not been stated by the defendant in the written statement. The law provides a procedure for amendment of the pleadings and if there are any new facts which the party wanted to bring on record, the party can amend pleadings, but without amendment of pleadings, a party cannot be allowed to lead evidence beyond pleadings.

19. Hon'ble Supreme Court in para 12 of **Bachhaj Nahar Vs. Nilima Mandal & Anr.** as reported in **(2008) 17 SCC 491** has also observed that the object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. It has been further observed that the Hon'ble Apex Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take. Hon'ble Supreme Court



further held in para 10 of the judgment as under:-

“10. The High Court, in this case, in its obvious zeal to cut delay and hardship that may ensue by relegating the plaintiffs to one more round of litigation, has rendered a judgment which violates several fundamental rules of civil procedure. The rules breached are:

(i) No amount of evidence can be looked into, upon a plea which was never put forward in the pleadings. A question which did arise from the pleadings and which was not the subject-matter of an issue, cannot be decided by the court.

(ii) A court cannot make out a case not pleaded. The court should confine its decision to the question raised in pleadings. Nor can it grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint.

(iii) A factual issue cannot be raised or considered for the first time in a second appeal.”

20. Hon’ble Supreme Court in para 6 of **Ram Sarup Gupta case** (supra) has observed that it is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it.

21. In view of the discussions made above as well as the statutory provision as mentioned in Section 9 of the Hindu



Marriage Act and after going through the contention of both parties, it is clear that concerned court has passed a reasonable order which needs no interference. In this way, appellant has not made out a case so as to interfere with the judgment passed by the Principal Judge, Family Court, Vaishali at Hajipur. Accordingly, the judgment dated 22.05.2018 passed by the Principal Judge, Family Court, Vaishali at Hajipur stands affirmed while rejecting the present M.A. No. 454 of 2019.

22. Pending I.A.'s, if any, stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

alok/shahzad-

AFR/NAFR	AFR
CAV DATE	12.09.2024
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