

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

First Appeal No. 22 of 2005

Smt. Rinku Devi. .... Appellant

Versus

Santosh Kumar. ... Respondent

CORAM :

HON'BLE MR. JUSTICE H. C. MISHRA  
HON'BLE MR. JUSTICE Dr. S.N. PATHAK

For the Appellant : Mr.. Ayush Aditya, Advocate  
For the Respondent : Mr. Atanu Banerjee, Advocate.

22/ 05.12.2016 Heard learned Counsel for the appellant and learned Counsel for the respondent.

2. The appellant wife has challenged the Judgment and Decree dated 17.04.2004, passed by the learned 1<sup>st</sup> Addl. District Judge, Chatra, in M.T.S. No.86/2000, whereby the marriage between the parties has been dissolved by a decree of divorce under Section 13 of the Hindu Marriage Act.

3. Though the impugned Judgment shows that the appellant, upon getting notice, though appeared in the Court below, but did not adduce any evidence, nor cross-examine the witnesses of the respondent husband, but the Judgment also shows that a petition under Section 24 of the Hindu Marriage Act for maintenance *pendente-lite* was filed by the appellant wife, upon which, no final order was passed by the Court below.

4. It also appears that initially, the suit was filed under Section 9 of the Hindu Marriage Act for restitution of the conjugal rights on 08.12.2000, alleging that the appellant wife had deserted the respondent from 05.05.1999, but during the pendency of the suit, an application was filed for amendment and converting the suit under Section 13 of the Hindu Marriage Act, which by order dated 30.11.2002 was converted into a suit under Section 13 of the Hindu Marriage Act upon amendment. The Lower Court Record shows that such conversion was made with the consent of the appellant wife.

5. However, aggrieved by the Judgment and Decree, the present First Appeal has been filed on various grounds. The limitation for filing the appeal had expired on 16.07.2004 whereas the appeal was filed on 21.03.2005. It is the case of the respondent that after the limitation period, the respondent husband has entered into second marriage, as no appeal was filed within the limitation period, and he has children from the second marriage also.

6. Faced with this situation, an order was passed on 21.11.2008 by this Court which is quoted here-in-below:-

***“Pursuant to the earlier order both the parties appeared in person. The appellant-wife appeared with her two children i.e. one son aged about nine years and one daughter aged about ten years. I am informed that after the divorce decree passed in 2006, the respondent-husband entered into second marriage.***

***In the aforesaid premises, the only option is left to hear the appeal on merit either by allowing the appeal or fixing substantial amount by way of compensation.***

***Let this case be listed for further hearing on Tuesday i.e. 25<sup>th</sup> November, 2008 as first case subject to part heard.”***

7. Again by order dated 25.11.2008, this Court directed the respondent to file affidavit stating about the correctness of the second marriage, solemnized by him. However, it appears that no affidavit has been filed nor any proposal for fixing a substantial amount by way of compensation came from the respondent's side.

8. A supplementary affidavit has been filed in this case on 15.03.2016, in which, it is stated that the respondent is a successful gold-smith and his shop is located in the heart of the city within the market place of Chatra. There is no denial to this fact till date on affidavit. It is an admitted fact that out of the wedlock, the parties are having two children living with the appellant-wife and are being maintained by her. The Court below, while decreeing the suit for divorce, did not allow any permanent alimony to the appellant wife.

9. Learned counsel for the appellant has submitted that even though the amendment in the application was carried out with the consent of the appellant on 30.11.2002, but the fact remains that in the amendment, only the suit for restitution of conjugal right was converted into a suit for divorce on the ground of desertion. It is submitted by learned counsel that since the desertion is alleged with effect from 05.05.1999 and the suit was originally presented on 08.12.2000, the statutory period of two years of desertion under Section 13(1)(i-b) of the Hindu Marriage Act had not been completed, and accordingly, the suit itself was not maintainable.

10. Learned Counsel for the respondent, on the other hand, has submitted that since the amendment was carried out converting the suit from the suit for restitution of conjugal rights to a suit for divorce, with the consent of the appellant in the Court below, she had consented for divorce, and as such the appellant was not entitled to any amount of permanent alimony or compensation.

11. In the facts of this case and taking into consideration the fact that the respondent husband has already married after the expiry of the limitation period, as no appeal was filed within limitation period, and it is submitted by learned Counsel for the respondent that he is having children from the second marriage also, we refrain from entertaining the appeal on merits and interfering with the Judgment and Decree of divorce granted by the Court below, but we are of the considered view that a permanent alimony should be granted to the appellant who is also maintaining two children out of the wedlock. We are informed that presently, the wife is getting monthly maintenance of Rs.1400/- from the respondent, pursuant to the order passed by the competent Court in the State of Bihar, under Section 125 of the Cr.P.C.

12. In the facts of this case and taking into consideration the fact that the respondent is a gold-smith, we, hereby, direct the respondent to make the payment of permanent alimony of Rs.7,00,000/-(Rs. seven lakh only) to the appellant wife, which shall be apart from the monthly maintenance to the appellant as granted by the competent Court in the State of Bihar. We direct the respondent to make the payment of the amount of the permanent alimony to the appellant wife positively within the period of three months from today.

13. This appeal stands disposed of with the directions above.

( H. C. Mishra, J.)

(Dr. S.N. Pathak, J.)