

IN THE HIGH COURT OF JHARKHAND AT RANCHI
First Appeal No. 143 of 2024

Babita Devi @ Babita Kumari, W/o Mukesh Kumar and D/o Bhola Saw at
present R/o Village & PS- Barnosa, PS- Silao, District- Nalanda (Bihar).
... .. Appellant

Versus

Mukesh Kumar, S/o Late Manik Chand Sah, R/o at 103, Yamuna Nagar, Road
No.07, Near Sai Vihar Colony, Hehal, PO- Hehal, PS- Sukhdeo Nagar, District-
Ranchi.
... .. Respondent

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Appellant : Mr. Rajesh Kumar, Advocate
For the Respondent : Ms. Kehkashan Afsheen, Advocate

05/ Dated: 19th September, 2025.
Per Sujit Narayan Prasad, J.

1. The instant First Appeal under Section 19(1) of the Family Courts Act, 1984 is directed against the judgment dated 27.06.2023 and decree dated 10.07.2023 passed by learned Addl. Principal Judge, Additional Family Court-II, Ranchi (in short, learned Family Judge), in Original Suit No.197 /2022 whereby and whereunder learned court Family Court has allowed the said Original Suit in favour of plaintiff/ husband (respondent herein) and passed a decree of divorce *ex-parte* by dissolving the marriage solemnized between the parties on 31.05.2017.

Factual Matrix

2. The brief facts of the case, as per the pleadings made in the plaint having been recorded by the learned Family Judge, needs to be referred herein as :

(i) The brief story of the case is that the marriage of the plaintiff (respondent herein) and defendant wife (appellant herein) was solemnized on 31.05.2017 according to Hindu rites and customs at Village- Barnosa, Nalanda, Bihar.

(ii) After the marriage ceremony, appellant and respondent came to Ranchi in the house of respondent where she lived eight days with the respondent, but it is alleged that appellant was not ready to cohabit with the respondent and in the first night, she annoyed and stated that she does not like the respondent/petitioner due to her black colour of his face.

(iii) Thereafter appellant returned in her parental house. It is alleged that appellant-wife always used to abuse and assault the respondent in presence of his family members, friends and relatives and called him in bad name and she is not ready to live with the petitioner. Parties have no issue out of the said wedlock.

(iv) The parents of the respondent/ petitioner died before his marriage and has not taken or demanded any dowry and gift from the appellant/ respondent and her parents.

(v) Further, the father and mother of appellant always threatened that all property belonging to the respondent/ petitioner and his ancestor will be registered in the name of appellant, then the appellant will live with the petitioner.

(vi) The appellant, her parents and other family members always used to come in the house of the respondent/ petitioner and assaulted the respondent/ petitioner and pressurized to sell out all movable and immovable property and give the money to the appellant and when the respondent/ petitioner denied then the appellant/ respondent and her parents assaulted many times in his room and threatened to kill him. They always threatened to file false criminal case against the respondent/ petitioner for demand of dowry and cruelty and sent him in jail.

(vii) On 24.02.2022, parents and brother of appellant/ respondent-wife came in the house of respondent/ petitioner and they pressurized the

respondent/husband for transferring of movable or immovable property including the dwelling house of the respondent/ husband in favour of appellant-wife\, but the petitioner denied, so, they abused and threatened the respondent/ husband for lodging the false criminal case.

(viii) She also stated that she does not like the petitioner and she is not ready to live with the petitioner. On the same day i.e. 24.02.2022, appellant-wife left her matrimonial house and went to her parental house with all her belongings, clothes, gold and silver ornaments.

(ix) Respondent/ husband and his friends tried their best to understand the reality on several occasions with appellant-wife, but she did not listen anything of the respondent-husband. There is no cohabitation between the appellant and respondent-husband, as she is not ready to cohabit with the petitioner which amounts to cruelty. It is alleged that appellant/ wife has deserted the respondent/ husband which amounts to cruelty. She has deserted the petitioner and she has been living in her parental house since 24.04.2002.

(x) The cause of action for the first time arose on 31.05.2017, when the marriage of appellant with respondent was solemnized and on subsequent date when appellant caused cruelty to the respondent and did not become ready for cohabitation as husband and wife and lastly on 24.02.2022 when the appellant/ wife left her *sasural* along with her entire valuables.

(xi) Thereafter the plaintiff/husband (respondent herein) had preferred a suit for decree of divorce under section 13 (1) (ia) of the Hindu Marriage Act 1955 which has been instituted as Original Suit No. 197 of 2022.

(xii) Accordingly, notice was issued but appellant/wife had not appeared thereafter, the learned Family Court has allowed the said suit *ex parte* vide order dated 27.06.2023 and accordingly decree was prepared on 04.07.2023.

3. Aggrieved with the aforesaid judgment and decree by which divorce has been granted, the present appeal has been preferred by the respondent-wife (appellant herein).

Submission of the learned counsel for the appellant-wife:

4. Learned counsel for the appellant/ wife has submitted that without valid service of notice no order of proper paper publication could be passed and same is against the principle of natural justice. Further there is no execution report with regard to receiving of notice.

5. The learned counsel appearing for the appellant has contended that without valid service of notice and without proper publication having its wide circulation at District- Nalanda, where the appellant/ wife is residing, the impugned judgment of divorce has been passed ex-parte.

6. It has further been contended that from the perusal of annexure-2 series which is the photocopy of the certified copy of the entire order passed in Original Suit No. 197 of 2022, it shall appear that notice was directed to be filed has been passed on 19-04-2022 and the husband of the appellant in a very cleaver manner filed a petition for publication on 23-07-2022, within a short span of time and same was allowed by the learned court below vide order dated 01-09-2022 without taking into consideration that no execution report of the same has come.

7. It has further been submitted that it is evident from the order dated 10-03-2023 that the learned Additional Family Judge, Additional Family Court-II, Ranchi has fixed the case for ex-party hearing, which appears to be passed in hurried manner and without giving opportunity of hearing in proper manner to the appellant herein.

8. It has been contended that even the learned trial Court has not taken proper care of procedure laid down in the Code of Civil Procedure which is

required to be followed in view of the section 14 of the Family Courts Act, 1984.

9. It has, therefore, been contended that the impugned judgment and decree since have been passed *ex-parte* and no case behalf of the appellant could be brought on the record which made the assertion of the plaintiff/husband through his evidence oral and documentary and remained unrebutted therefore, the impugned judgment and decree need to be interfered with.

Submission of the learned counsel for the respondent/husband:

10. While on the other hand, the learned counsel appearing for the respondent-husband has submitted that the judgment and decree impugned passed by the learned Family Judge, cannot be said to be *ex-parte*, since, the notice has been deemed to be served as would be evident from the annexure-2 series which is the photocopy of the certified copy of the entire order passed in Original Suit No. 197 of 2022 by the learned Family Court and the same has been annexed to the instant Memo of Appeal by the appellant wife.

11. Learned counsel for the respondent-husband, based upon the aforesaid grounds, has submitted that the impugned judgment and decree, therefore, is not fit to be quashed.

Analysis

12. We have heard the learned counsels appearing for the parties, and gone through the material available on record.

13. The sole ground as has been taken by the appellant wife that the impugned judgment and decree have been passed *ex-parte* and, as such, we have not gone through the issue on merit, rather we have concentrated

ourselves on the issue of the fact that as to whether the impugned judgment and decree can be said to be ex-parte or not.

14. This Court before answering the said issue needs to refer herein the requirement to secure appearance of the party who is necessary party to the lis for the purpose of proper adjudication of the issue.

15. There is no dispute that the appellant-wife herein is the necessary party, since, the entire allegation of commission of cruelty has been alleged against the appellant-wife and as such, she had to be given an opportunity to rebut the said allegation.

16. It is also equally settled that the court is required to issue notice for the purpose of securing appearance of the concerned parties. The procedure to secure appearance is provided under Order V of the Code of Civil Procedure, 1908. Section 18 of the Family Courts Act, 1984 provides the applicability of the procedural law as available in the Code of Civil Procedure, 1908. The requirement, as per the law as provided under the Code of Civil Procedure, 1908 for the purpose of securing the appearance of the parties, has already been dealt with and as per which it is the duty of the court to take all effective measures to secure the appearance of the parties concerned, i.e. by issuance of notice through registered post or through ordinary process and if on the basis of the settled procedure as laid down for securing the appearance, even the parties are not appearing, then the order is to be passed that too on the basis of application which is to be made by the party to go for the substituted service of notice through paper publication.

17. This Court needs to refer as to whether the process as laid down, as referred herein, has been followed by the learned Family Judge or not?

18. This Court in order to assess the aforesaid fact has gone through the record of the case which has been called for by this Court vide order dated 08.01.2025.

19. It is evident from the order sheet dated 10.03.2022 that the case was put up on 11.03.2022 for hearing on admission by the learned family Court and vide order dated 11.03.2022 the appeal was admitted and direction was passed to issue notice to the respondent wife and accordingly plaintiff husband was directed to file requisites. It is evident from the order passed on 19-04-2022 that the petitioner husband files requisite of notice in both modes i.e Register and Goswara to be filed. Accordingly, Goswara notice has been issued which would be evident from side portion of the order sheet.

20. Thereafter petitioner/husband filed a petition for publication on 23-07-2022 and the same has been allowed by the learned Family Court Vide order dated 01.09.2022. It is evident from the order dated 03.09.2022 that the petitioners filed draft of paper publication.

21. Further vide order dated 10.03.2023, the learned Family Judge has come to a finding with respect to the sufficient service of notice and accordingly the case was fixed for *ex-parte* hearing.

22. It is evident from the perusal of order-sheet that there is no execution report with regard to receiving of notice. It also appears that the notice through registered post although had been sent, but there is no reference of the execution report and the order of publication has been passed in haste.

23. Further it has been contended by the appellant wife that without proper publication in the newspaper having its wide circulation at District- Nalanda, where the appellant/ wife is residing, the case has been fixed for proceeding *ex-parte* vide order dated 10.03.2023.

24. Thus, from the entire order passed in Original Suit No. 197 of 2022, it is evident that notice was directed to be filed has been passed on 19-04-2022 and the respondent /husband filed a petition for publication on 23-07-2022, and same was allowed by the learned court below vide order dated 01-09-2022 without taking into consideration that no service report of the notice has come.

25. This Court, therefore, is of the view that the procedure as laid down under the Code of Civil Procedure, 1908 has not been followed and merely on the basis of the paper publication, the case has been posted for ex parte proceeding vide order dated 10.03.2023.

26. Thus, from the perusal of the order sheet clearly indicates that case has been fixed for *ex-parte* hearing without taking proper recourse and the learned Court failed to adopt the procedure established by law particularly about the publication and proceeded *ex-parte* resulting into miscarriage of justice.

27. It needs to refer herein that the case which is related to the matrimonial dispute concerning annulment of marriage or divorce proceeding is a serious matter and it connects entire life of husband and wife against whom a decree for declaration of nullity or divorce has been sought. In the said matter, the court should not follow mechanical approach rather the court should take all statutory provision into account which is expected for appearance of the party.

28. This Court, based upon the aforesaid as has been referred hereinabove that the appellant being the wife and a contesting party upon whom the allegation of cruelty has been levelled by filing an application under Section 13(1) (ia)) of the Hindu Marriage Act, 1955, and as such, she ought to have given all effective opportunities to contest the case by taking effective

measures for the purpose of securing her appearance, but, the record suggests that no such efforts have been taken by the learned Family Judge.

29. This Court, in exercise of the appellate jurisdiction, is of the view that the learned Family Judge while posting the matter for ex-parte hearing has not taken the proper recourse for appearance of the opposite party available in the statute and has erred in passing the impugned judgment and decree. As such, the impugned judgment and decree need interference on the ground of providing an opportunity to the defendant /wife to defend herself (the appellant herein).

30. Accordingly, the judgment dated 27.06.2023 and decree dated 10.07.2023 passed by learned Addl. Principal Judge, Additional Family Court-II, Ranchi (in short, learned Family Judge), in Original Suit No.197 /2022 is hereby quashed and set-aside.

31. The Original Suit No.197 /2022 is restored to its original file.

32. Let the case be decided on merits afresh.

33. Mr. Rajesh Kumar, learned counsel appearing for the appellant has submitted before this Court that the appellant/ wife will put her appearance before the learned Addl. Principal Judge, Additional Family Court-II, Ranchi by filing *Vakalatnama* on 15.10.2025.

34. With the aforesaid direction and observation, the instant appeal is hereby disposed of.

35. Pending I.As., if any, stands disposed of.

36. The Trial Court Records be sent back forthwith. 8

(Sujit Narayan Prasad, J.)

(Gautam Kumar Choudhary, J.)