

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.973 of 2024

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Soni Kumari, W/o Shri Sajjan Kumar, R/O- Pahsara, Ward No - 12, P.O - Pahsara Babhangawan, P.S - Nav Kothi, Distt - Begusarai, (Bihar) Pin- 851127. Address of parent house A/p D/o Balmiki Sharma, R/o Village Paschim Karyanand Nagar, Ward No. -9, Purani Bazar, P.O. and P.s. and Dist- Lakhisarai, Pin-811311.

... .. Appellant/s

Versus

Sajjan Kumar, S/o Sri Sitaram Singh, R/O- Pahsara, Ward No - 12, P.O - Pahsara Babhangawan, P.S - Nav Kothi, Distt - Begusarai, (Bihar) Pin- 851127.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ram Jiban Pd. Singh, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE RANA VIKRAM SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date : 17-09-2026

The application under Section 5 of the Limitation Act is taken up for hearing.

2. We have heard the learned Advocate for the appellant. We have also perused the grounds set forth for condonation of delay. We are satisfied that the appellant was sufficiently prevented from preferring the instant appeal within the period of limitation. Therefore, the application for condonation of delay is allowed.

3. The appeal is taken up for hearing.

4. The instant appeal is directed against a judgment of



decree of dismissal of Matrimonial (Divorce) Case No. 20/2022 filed by the wife of the opposite party against her husband.

5. It appears from the pleadings of the appellant that her marriage with the respondent was solemnized on 07.05.2007. In the said wedlock, the appellant gave birth to a male child on 03.01.2009. The respondent was a retired soldier of Indian Air Force. At the time of marriage, he used to reside in Chandigarh. After marriage, he returned to his place of work, but did not take his wife with him. After few days, he returned to his house on leave, when the appellant requested him to take her back to his house from her matrimonial home, but the respondent did not want to take her back to her matrimonial home on one pretext or other. The appellant/wife felt insulted and found the conduct of the respondent mentally cruel. Without having any opportunity of settlement, the father of the appellant wrote a letter to the employer of the respondent on 27.04.2009 and on being persuaded by his employer, the respondent took her to Tughlaqabad, Delhi, at his then place of work. She was also deprived of her husband's love and affection. On the contrary he abused her with filthy language and made an aspersion that she was mentally derailed. He also insisted her to commit suicide. When the dispute reached its peak between the



parties, the respondents brought her back to Begusarai and had kept her at her paternal home. The appellant became mentally ill, failing to bear such torture and cruelty. The respondent also alleged the appellant as a lady of immoral character. The respondent occasionally came to his house during the period 2009 to 2012, but during the said period he never took his wife to his house. In April, 2012 the respondent took the appellant to his house, but repeated the same act of cruelty upon her. The father and brother of the appellant came to settle the dispute between the parties, but they were also driven away by the respondent with abusive languages. Since February, 2013 the respondent was permanently ousted by her husband. He also does not look after his minor son.

6. On the above allegation, the appellant prayed for dissolution of his marriage against her husband. The learned Principal Judge, Family Court at Lakhisarai by his judgment dated 15th June, 2024 dismissed the suit *ex-parte*.

7. It appears from the record that in-spite of service of notice, the respondent did not appear to contest the suit. Before this Court also several attempts were taken for service of notice and ultimately notice was served by substituted way through paper publication upon the respondent. The respondent did not



come forward to contest the case. The conduct of the respondent clearly shows that he is not willing to stay with his wife, appellant herein, as husband and wife. They are living separately since February, 2013, for more than thirteen years. The allegation of cruelty allegedly perpetrated by him upon his wife was not challenged by the respondent. The conduct of the respondent clearly shows that marital tie between the parties was irretrievably broken. However, we are not in a position to pass any decree on the ground of irretrievable breakdown of marriage.

8. At the same time, we are of the view that the conduct of the respondent irretrievably breaking down the marriage is a ground of cruelty, where the wife is deprived of having matrimonial relationship continued with her husband.

9. The trial Court did not consider such aspect of the matter. The impugned judgment was based upon strict technicalities to the effect that the wife failed to produce specific evidence of cruelty against her husband. However, when husband did not come forward to deny the allegations made by the wife and there is no matrimonial relationship for a long and continuous period of thirteen years between the parties, this should be treated as cruelty and the trial Court ought to have



passed a decree for divorce.

10. Considering the discussion made hereinabove, we are of the view that the judgment passed by the trial Court cannot be sustained.

11. Accordingly, the impugned judgment is set aside.

12. The appeal is allowed. The appellant do get a decree for dissolution of marriage by divorce. The office is directed to draw up the decree, accordingly.

(Bibek Chaudhuri, J)

(Rana Vikram Singh, J)

Supratim/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.09.2026
Transmission Date	NA

