

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.92 of 2020

Shyam Bihari Mishra Son of Bachcha Mishra, Resident of Village-Maghar(22 Katha), P.O.-Saghar Sultanpur, P.S.-Bhagwanpur Hatt, District-Siwan (Bihar).

... .. Appellant/s

Versus

Sanju Devi Wife of Shyam Bihari Mishra, Daughter of Verma Pandey Resident of Village-Maghar (22 Katha), P.O.-Saghar Sultanpur, P.S.-Bhageanpur Hatt, District-Siwan (Bihar) At Present Residing at Village-Mahaua, P.O.-Balsohi, P.S.-Bhagwanpur, District-Siwan (Bihar).

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Dhanendra Chaubey, Advocate
For the Respondent/s : None

CORAM: HONOURABLE MR. JUSTICE NANI TAGIA

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 04-05-2026

Heard learned counsel appearing on behalf of the appellant.

2. The present Miscellaneous Appeal is directed against the Judgment and Decree dated 12.07.2019 passed by the learned Principal Judge, Family Court, Siwan in Divorce Case No. 216 of 2012, whereby and whereunder the learned Principal Judge, Family Court, Siwan dismissed the divorce case filed by the applicant (appellant herein).

3. Briefly stated, the fact of the appellant's case is that the appellant was married with respondent on 22.03.2003



according to Hindu rituals and customs and it is asserted that after marriage, the conjugal life remained good for two years and thereafter she returned to her parental house. It is further stated that the respondent came to her matrimonial house 2nd time and there was metamorphosis in her behaviour. Her behavior was indecent and as she began to visit market places without intimating the appellant and his family members and she was seen in market with another person. Learned counsel for the appellant further states that on 15.10.2012, the respondent went to market without intimating the appellant and his family members and stayed from 11:00 a.m. to 09:00 p.m. and the appellant witnessed that she was coming from a cinema hall with a young male person whose name was not known but later, on enquiry, his name came to fore as Dhananjay Tiwary of village Mahana (also mentioned as Mahaua at some places). The appellant had knowledge that the respondent was in love affair with said Dhananjay Tiwary of her parental village. Despite effort being taken by the appellant, the respondent did not agree to improve her behavior. Hence, the appellant filed Divorce Case No. 216 of 2012 before the learned Principal Judge, Family Court, Siwan. After admission of the Divorce Case, the concerned



court issued processes for enforcing the appearance of respondent, but in spite of exhausting the processes under the Civil Procedure Code for appearance for parties, respondent did not turn up before the concerned court and, therefore, concerned court proceeded to hear the Divorce Case *ex parte*.

4. Learned counsel for the appellant has submitted that the *ex parte* judgment and decree passed by the concerned Court is bad in law as well as on facts as the concerned Court has not appreciated the facts and materials available on record while deciding the present divorce case. He further submits that as per para-8 of the plaint, the respondent was seen with different male persons of almost similar age by the appellant and in para 11 & 12 he has cited that the concerned court has not taken into account that very aspect despite there being material available on record. Learned counsel for the appellant has further submitted that though the concerned court has taken into account that the appellant has rightly produced the witnesses in support of the petition, yet the concerned court has not discussed the evidences properly and has reached to the conclusion that the petition is without having any merit. In support of the contention of divorce petition, four witnesses have been examined and they have



supported the contents of petition and they have already stated that wife is not residing with the husband since more than four years and the concerned court has not taken into account the contents of the evidence adduced by all the witnesses and that the wife has left the company of the appellant/husband without the consent of husband/petitioner. He further submits that, in the light of aforesaid facts and circumstances, the *ex parte* judgment and decree passed by the concerned Court is not justified and legal and, hence, deserves to be quashed and set aside.

5. In the present proceeding, necessary processes have already been initiated to secure the presence of respondent/wife as notices have been issued twice to the respondent, but no one has turned up on behalf of the respondent.

6. We have perused the judgment passed by the Principal Judge, Family Court, Saran. From the judgment, it is evident that while dismissing the said divorce petition, the concerned court has recorded the finding that the appellant has failed to prove that respondent has illicit relation with another person and on account of said reason, the respondent was spending life with another person. It has also not been



proved that the respondent is living her life with other person after deserting the appellant. The very contents of divorce petition do not reveal the name of the person against whom there is allegation of adultery. The very petition filed on behalf of the appellant/Shyam Bihari Mishra does not reveal the time, place and name of person with whom the respondent is alleged to have illicit relation. It has been mentioned that the marriage took place on 22.06.2003, but there is an assertion in the said divorce petition that the relation between two parties was quite good for two years and after that no specific date or time has been mentioned upon which the relation between both the parties ran into bad weather, except disclosure that on 15.10.2012 she went to market without informing the appellant at 11:00 a.m. and returned at 09:00 p.m. and she was found with a male person, aged about 40 years. The appellant found his wife coming from cinema hall with someone, aged about 40 years. Upon interaction, appellant came to know that his wife has been in love affair from before solemnization of marriage. The allegation of adultery is made against the respondent/wife without revealing the name of person who was accompanying respondent and the person against whom allegation is made



has not been made party. The allegation is vague as except 15.10.2012, no specific date, time and place has been mentioned in between 2003 and 2012. No circumstances has been mentioned regarding the said allegation. Abruptly, at the time of filing of suit, specific date has been mentioned regarding the manner in which wife has not taken consent for leaving the matrimonial home. The allegation, at the very outset, is without any basis as no circumstance since 2003 to 2012 has been specified with regard to the date, time and place of the allegation. He has only explained in his petition that the relation between the couple was quite good for two years of the marriage after which his wife became indisciplined, but he has not mentioned any specific date and time from which the conduct of wife become hostile towards the appellant and his family members. The appellant has used the word 'paramours', but the allegation is quite vague because not a single name has been disclosed as a paramour. In this way, the allegation is quite vague. In para 8, the allegation was quite vague that several times she was seen with different male persons of her similar age, but the allegation does not reveal any specific date, time and place. In this way the allegation is without any basis.



7. After perusing the judgment passed by the concerned court, it is evident that while deciding the present case, the court has taken into account all the relevant materials in support of the divorce petition. The concerned court has recorded the reasoning that the person against whom the allegation is made has not been made party and the concerned court has also recorded reasoning on the issue of desertion that there was no cogent material to prove that the respondent was having illicit relation with some other person, on account of which she has left the appellant but the very allegation is merely a ballpark assessment of the appellant and lastly in para 19, the concerned court has discussed that the appellant has failed to prove the case that the respondent has illicit relation with other person and respondent has abandoned the company of appellant. In this way, the reasoning quoted by the concerned court is fully justified and the concerned court, while giving the reasoning, has recorded that on the basis of material available on record, it is evident that the witnesses have stated that the respondent has illicit relation with Dhananjay Tiwary of village Mahana, but to prove the said aspect, no one from the village Mahana was adduced by the appellant as a witness in the court and Dhananjay Tiwary,



with whom respondent is alleged to have illicit relation, was not even made party to the said suit.

8. From the side of appellant, four witnesses were examined. A.W.1 Bachcha Mishra, A.W.-2 Ajay Roy, A.W.-3 Pradyumna Singh and A.W.-4 Shyam Bihari Mishra (appellant himself).

9. In the light of given facts and circumstances of the case, the only point for consideration is:-

Whether the appellant has proved the case on the ground of adultery in the light of given evidence and the materials available on record.

10. It is necessary to analyze the evidence adduced by A.W. 4, who is appellant himself. At para-14, A.W. 4 has stated that the said boy is Dhananjay Tiwary who is the permanent resident of Mahana, P.S. Bhagwanpur Hat, District- Siwan, with whom the respondent has illicit relation for years, but the date, time and place has not been mentioned anywhere. But the aforesaid fact, as adduced by A.W. 4, finds no place in the plaint. Further, in para 17, AW-3 has stated that when the respondent refused to disclose the name (of the paramour), the appellant went with A.W. 3 to village Mahana where it came to fore that Sanju Devi has illicit relation with



Dhananjay Tiwary, son of Harendra Tiwary of the said village, but the date of visiting Mahana has not been mentioned. The said fact has also not been mentioned in the plaint. Learned counsel for the appellant has not mentioned any date, time and place regarding the factual circumstances that by whom the appellant was informed regarding the respondent having illicit relation with a particular person. His assessment was based on suspicion as the date, time and place was not mentioned in any paragraph of the petition on which the respondent was seen with a particular person at a particular place, except only on one occasion i.e. on 15.10.2012 and the allegation as mentioned in the plaint is quite vague. The divorce petition is quite vague as the specific date of cause of action has not been mentioned. The divorce petition does not reveal any specific date and time from which the conduct of wife became incompatible with the appellant. Even the allegation of adultery is without any basis as no circumstance since 2003 to 2012 has been specified with regard to the date, time and place of the allegation. In para 14 of the divorce petition, it is stated that the respondent has not revealed the name and parentage of paramours. In this way, the allegation is based on mere conjecture and surmises. At some places, allegation is



that she was witnessed with paramours and at some places allegation is that she was witnessed with paramour. It is also quite vague that the name of paramours which is plural in number, has not been stated in the divorce petition though he has added the name of one person namely, Dhananjay Tiwari, at the time of adducing evidence, who has not been made a party in the suit. It has also not been revealed by whom the appellant was informed regarding the respondent having illicit relation with a particular person and no date and time has been specifically mentioned with regard to the said allegation, except on one occasion, i.e. on 15.10.2012.

11. When the query is put to the learned counsel for the appellant as to why there is no specific pleading in the plaint regarding the adultery, he has contended that though there is no specific pleading regarding the adultery, but through the evidence he has supported the case of allegation of adultery.

12. It is settled law that if the person against whom allegation is made, has not been made party to the divorce proceeding, then, on that score the person against whom allegation is made, has been left undefended.

13. The next point for consideration is whether the



evidence adduced by the Appellant-Plaintiff were beyond pleadings and if so, what would be its effect? The perusal of averments made in the petition and deposition of the witnesses, examined on behalf of the Appellant-Plaintiff, we find that there is no averment in the petition which constitute ground of adultery, desertion or any other ground as provided under Section 13 of the Hindu Marriage Act.

14. 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 appellant.

15. Hon'ble Supreme Court in para 12 of the judgment passed in the case 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.

16. 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 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.

17. 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.” 30. 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.”

18. On all counts, keeping in view the discussions made in foregoing paragraphs, we find that there is no merit



in the present appeal warranting any interference in the impugned judgment and decree. The Family Court has rightly dismissed the matrimonial case of the appellant seeking divorce. The present appeal is dismissed accordingly, affirming the impugned judgment and decree.

19. Pending interlocutory application(s), if any, shall also stand disposed of.

(Nani Tagia, J)

(Alok Kumar Pandey, J)

Nilmani/-

AFR/NAFR	AFR
CAV DATE	NA
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