

IN THE HIGH COURT OF JUDICATURE AT PATNA MA No.274 of 2010

ANIL KUMAR S/O SRI AMARNATH PRASAD R/O MOHALLA- NAGLA GADIWAN TOLA, P.O. & P.S.- MALSALAMI, DISTT.- PATNA

.... Petitioner .... Appellant

Versus

SMT. SITA DEVI W/O ANIL KUMAR R/O

MOHALLA- NAGLA GADIWAN TOLA, P.O. & P.S.- MALSALAMI, DISTT.- PATNA, AT PRESENT RESIDING AT CHIDAIYATAND (POSTAL PARK , ROAD NO.1), P.O. & P.S.- KANKARBAGH, DISTT.- PATNA

.... Opp. Party ..... Respondent

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For the Appellant : Mr Jitendra Kishore Verma, Adv. For the Respondent : M/s Anil Kumar, Smt. Annapurna Gupta and Govind Pd. Sinha,

Advocates

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5 12.8.2010 Heard the parties. This appeal is directed against the judgment and order dated 22.2.2010 passed by the learned Principal Judge, Family Court, Patna whereby Matrimonial Case No.171 of 2005 preferred by the appellant has been dismissed on a finding that he is not entitled to a decree of divorce sought for because he failed to prove the allegation that the respondent wife was suffering from mental disorder and was guilty of cruelty. It is not in dispute that soon after the marriage in 2

2002 a son was born from the wedlock but for about last six years, the husband and the wife are separate on account of differences. The criminal case lodged by the respondent wife bearing complaint case no.1786 (c) of 2006 is still pending in the court of SDJM, Patna and in that case the appellant had to suffer imprisonment for about 3 1/2 months before he could be released on bail. The circumstances indicate that the marriage has broken down irretrievably, therefore, on persuasion, the parties agreed for amicable settlement. As per terms of the settlement, the marriage shall stand dissolved by a decree of divorce on the ground of mutual consent but on the condition that an amount of Rs.1.5 lakh shall be paid by the appellant to his wife by way of permanent alimony. It has been agreed that this amount should be paid by the appellant through bank drafts in the name of the respondent in installments but the entire money must be paid within a period of one year from today. It has further been agreed that besides the aforesaid lump sum alimony, the appellant shall pay to the respondent the monthly maintenance amount lying in arrears till this month within 3

a period of four months from today. As to what is the exact amount of arrears on account of monthly maintenance shall be found out by the appellant on the basis of materials available on record or else he shall pay an amount of Rs.24,000/- (Twenty four thousand) by way of arrears of maintenance because that is the amount which appears to be due as per submission advanced on behalf of the respondent. It is further agreed between the parties that the respondent shall take steps in the light of this order to get the criminal case stayed for a period of one year from today and she shall withdraw the said criminal case as soon as the permanent alimony of Rs.1.5 lakh is paid to the respondent as per terms indicated above. The appeal stands disposed of. No costs. (Shiva Kirti Singh, J.)

(Hemant Kumar Srivastava, J.)

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