

(2005) 01 PAT CK 0053
In the Patna High Court
Case No : Matrimonial Reference No. 1 of 1999

Deepa Raj Kumar Singh

APPELLANT

Vs

Deepak Kumar

RESPONDENT

Date of Decision : 12-01-2005

Acts Referred:

Divorce Act, 1869 — Section 17

Citation : AIR 2005 Patna 71 : (2005) 1 BLJR 222 : (2005) 2 DMC 352 : (2005) 2 JCR 582 : (2005) 1 PLJR 488 : (2005) 2 RCR(Civil) 781

Hon'ble Judges : Shiva Kirti Singh, J; Ram Nandan Prasad, J; Radha Mohan Prasad, J

Bench : Full Bench

Advocate : None, for the Appellant; None, for the Respondent

Judgement

1. The matter has come for confirmation of judgment and decree dated 28.11.1998 passed by the 6th Additional District Judge, West Champaran, Bettiah in Divorce Case No. 13/93.
2. The short facts of the case are that Divorce Case No. 13/93 was filed by Deepa Raj Kumar Singh, the wife of the respondent. The respondent appeared in this case and filed written statement. In the written statement it has been stated that a decree of dissolution of his marriage with the petitioner (wife) be passed. The Court below proceeded with the hearing of the case and witnesses were examined. After considering the evidence and the materials on record the Court passed the judgment and decree as indicated above and referred the matter for confirmation u/s 17 of the Indian Divorce Act, 1869. Thus, the case has been placed before us.
3. Notices were issued to the parties but could not be served and as such, under the direction of the Court notices were published in two daily newspapers, namely, the Times of India and the "Aaj". It has been reported that in spite of publication of notices neither party has entered appearance.

4. At this juncture it would not be out of place to mention here that Section 17 of the Divorce Act, 1869 deals with confirmation of judgment and decree by the High Court passed by the Court below. The said provision has been deleted by the Indian Divorce (Amendment) Act, 2001. However, the divorce case was filed in 1993 when Section 17 of the Divorce Act, 1869 was in force. The decree was also passed in the year 1988 when the said provision was in force. It is well established rule of law that the provision/statute is prospective unless it is expressly made retrospective. In this regard reference may be made to a decision in the case of Mrs. Larley Vs. John @ Johny C.A. . The Full Bench while considering Section 17 of the Divorce Act and amendment/deletion of Section 17 by Amendment Act, 2001 has held that it is well settled rule of interpretation that every statute is prima facie prospective, unless it is expressly or by necessary implication made to have retrospective effect and has also held that there is no such clause in the amendment to show that the legislature had intention to make the amendment retrospective. Since the case was governed by Indian Divorce Act, 1869 the Court below has referred the judgment and decree u/s 17 of the Divorce Act for confirmation by this Court and no party has entered appearance in spite of the publication of notice in the newspapers, the Court has no option but to confirm the decree.

5. Accordingly, the judgment and decree passed by the Court below is confirmed and the reference is disposed of.