

**Akbar Ali Vs. State of Bihar**

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**SooperKanoon Citation :** [sooperkanoon.com/136199](http://sooperkanoon.com/136199)

**Court :** Patna

**Decided On :** Sep-27-1996

**Judge :** Shashank Kumar Singh and Onkar Nath Asthana, JJ.

**Appeal No. :** Criminal Appeal No. 55 of 1985

**Appellant :** Akbar Ali

**Respondent :** State of Bihar

**Disposition :** Appeal Allowed

**Judgement :**

**Onkar Nath Asthana, J.**

1. Though the respondent is served, no one appears for the respondent.

2. Leave granted.

3. The appellant is the wife, against whom her husband and obtained an ex-parte decree of divorce. After obtaining the decree, the husband died. The wife on coming to know of the ex-parte decree, applied for setting aside the decree of divorce under Order IX Rule 13 of the Code of Civil Procedure. The Trial Court dismissed the said application observing that since the divorce is a personal remedy, it cannot be pursued after the death of the husband. On appeal, the Trial Court's view was reversed. But the Appellate Court's view has in turn been

reversed by the High Court.

4. We are of the opinion that the wife should be and is competent to maintain the application under Order XI, Rule 13. Even though the husband is dead, yet the decree obtained by him is effective in law and determines the status of the appellant. If the appellant says that it is an ex-parte decree and ought to be set aside, her application has to be heard on merits. The decree of divorce determines her status as a wife apart from determining her rights in the properties of her deceased husband. This gives her sufficient locus standi and right to contest the divorce proceedings even after the death of her husband.

5. Accordingly, the appeal is allowed and the matter is remitted to the Trial Court to dispose of the application filed by the appellant under Order IX, Rule 13 on merits in accordance with law. No costs.

6. Ms. Bina Gupta says that the appellant has been provided a job in the Electricity Board on compassionate grounds on the basis that she is the wife of the deceased employee. Pending disposal of the divorce proceedings finally, it is directed that she will not be disturbed from the said post.

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