

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No.13 of 2022

Ranjan Kumar Dikshit

.....

Appellant
Mr. R.N. Singh, Adv.

-Versus-

Aradhana Dash

.....

Respondent
Ms. P. Nayak, Adv.

CORAM:
JUSTICE S. TALAPATRA
JUSTICE SAVITRI RATHO

ORDER
18.11.2022

Order No.
04.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard Mr. R.N. Singh, learned counsel appearing for the appellant and also Ms. P. Nayak, learned counsel appearing for the respondent.
3. By means of this appeal, the Judgment dated 22.12.2021 delivered in Civil Proceeding No.603/2017 by the Judge, Family Court, Balasore has been challenged.
4. Mr. R.N. Singh, learned counsel for the appellant has taken us to the Judgment and stated that since he could not pay the arrear maintenance within the stipulated time, his defence had been struck

down. The relevant part of the Judgment for purpose of reference is extracted hereunder:

“Striking off the defence of the respondent is an order which ought to be passed in the last resort, if the courts find default to be willful and contumacious, particularly to a dependent unemployed wife and minor children. Now it is left for a finding if the petitioner-husband has willfully defaulted to comply the order of this court dt.30.07.2019 by non-payment of the interim maintenance to his wife and minor child.

As stated earlier the order of interim maintenance was passed on 30.07.2019 by directing the petitioner to pay the interim maintenance amount from 18.05.2018. More than three years and seven months have elapsed in the meanwhile. Filing of two execution applications re-enforces the truth of the imputations of the respondent-wife. Therefore, judging the above conduct of the petitioner-husband, it is safely concluded that he has willfully defaulted to pay the interim maintenance amount. As such, the above act of omission and non-compliance of order of this Court clearly amounts to contumacious. Thus, the petition dt.15.12.2021 deserves merit for consideration and accordingly, it is allowed. The petition dt.01.11.2017 of the petitioner-husband stands dismissed by striking off the same in the light of the direction of the Hon’ble Apex Court as quoted above.”

5. Mr. Singh, learned counsel on a query of this Bench has agreed that he will pay a sum of Rs.2 lakhs against the arrear

maintenance. In view of the said statement made by the learned counsel for the appellant, we are inclined to interfere with the said Judgment dated 22.12.2021 and accordingly, the said Judgment is set aside. 'The Judge', Family Court, Balasore is directed to proceed with the Civil Proceeding No.603 of 2017 from the stage of framing of issues/conciliation, subject to payment of Rs.2 lakhs to the respondent within a period of one month from today.

6. Ms. Nayak, learned counsel has given us an account how the appellant was resolving the order of maintenance. Consequently, the respondent had instituted two execution proceedings for realizing the due sum from the appellant.

7. Be that as it may, it is made absolutely clear if the said amount as directed to be paid by the appellant within one month is not paid within the said time frame, this order will lose all its force and the Judgment dated 22.12.2021 delivered in Civil Proceeding No.603 of 2017 by the Judge, Family Court, Balasore will be restituted without reference to this court and the appellant shall suffer the consequential dismissal of the suit for his own default.

8. In terms of the said condition, this appeal stands allowed.

9. A copy of this order be supplied to the counsel for the parties free of cost.

10. The respondent is directed to submit a copy of this order to the Judge, Family Court, Balasore.

(S. Talapatra)
Judge

Rati Ranjan



(Savitri Ratho)
Judge