

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No. 4 of 2017

Kanaklata Mishra

.....

Appellant

Mr. S. Mohanty, Advocate

-versus-

Mr. Suryamani Mishra

.....

Respondent

Mr. S.S.K. Nayak, Advocate

CORAM:

JUSTICE S. TALAPATRA

JUSTICE SAVITRI RATHO

ORDER

02.12.2022

Order No.

35.

1. This matter is taken up through the hybrid mode.
2. Heard Mr. S. Mohanty, learned counsel appearing for the Appellant and Mr. S.S.K. Nayak, learned counsel appearing for the Respondent.
3. By means of this appeal, the Appellant has challenged the judgment dated 19.11.2016 delivered in C.P. No.142 of 20211 by the Judge, Family Court, Jajpur.
4. At the outset, we must clarify that the Appellant has not challenged the decree of divorce. Her challenge is confined to the quantum of alimony as determined by the Judge, Family Court, Jajpur. By the said judgment dated 19.11.2016, the Judge, Family Court has directed the Respondent herein to pay a sum of Rs.2,00,000/- (Rupees two lakhs) as permanent alimony. It is an unquestionable fact that the Respondent has not challenged the said quantum but has

deposited the said sum according to Mr. Nayak, learned counsel appearing for the respondent, in the Family Court by the demand draft dated 30.01.2017. The said demand draft has not been accepted by the Appellant. That is still lying with the Judge, Family Court. In the wedlock of the Appellant and the Respondent, a girl child was born and she is now at her marriageable age. It has been asserted by the Appellant that her marriage has been fixed on 14.12.2022.

4. By the order dated 24.11.2022, we directed the Respondent to make fund available for paying the cost of marriage of his daughter. The said order has not been complied with. Today, Mr. Nayak, learned counsel for the Respondent has submitted that the Respondent has filed an application for recalling the said order dated 24.11.2022. We are surprised at the conduct of the Respondent. The marriage of their daughter is a duty of both the parents. But the Respondent is trying to avoid his obligation.

5. We have perused the findings of the Judge, Family Court, Jajpur and we do not find any infirmity which requires our interference excepting the amount of alimony. While determining the alimony, the future expenses relating to the daughter's marriage was not taken into consideration by the Judge, Family Court. Mr. Nayak, learned counsel has submitted that the Respondent is in penurious condition. He is unable to pay any amount for the marriage. A similar issue has been dwelled upon by the Apex Court in *Durga Prasanna*

Tripathy vs. Arundhati Tripathy: AIR 2005 SC 3297. In that case, the husband was out of employment and he was also facing criminal prosecution. The wife was employed. In that circumstances, considering the economical condition of the husband and the relative status of the parties, Rs.1,50,000/- was granted in favour of the wife towards permanent alimony. But in that case, there was no issue relating to payment of the cost of marriage of their own daughter. We have taken notice of the husband's financial condition at present. Having regard to the nature of employment, he was engaged in and his co-lateral responsibility as parent, we are of the view that the Respondent shall pay an additional amount of Rs.3,00,000/- (Rupees three lakhs), to the Appellant on account of the permanent alimony. Thus, the permanent alimony is enhanced to Rs.5,00,000/- (Rupees five lakhs) in total. Out of which Rs.2,00,000/- has been sought to be paid by the demand draft. We direct the Respondent to pay the entire amount to the Appellant by 13th December, 2022, as we have recorded that the marriage of his daughter is fixed on 14.12.2022. For that purpose, we direct the Judge, Family Court, Jajpur to return the demand draft to the Respondent for purpose of revalidating the same. In fine, the Respondent shall pay the additional amount of Rs.3,00,000/- (Rupees three lakhs) by a separate demand draft by the said stipulated date.

6. Having observed thus, the appeal is partly allowed.

7. The Registry is directed to draw the decree accordingly. In the event of failure of the said amount, this decree be treated as a money decree.

8. Physical copy of the LCRs, if lying with the Registry shall be returned forthwith.

9. Urgent certified copy of this order be granted as per rules.

(S. Talapatra)
Judge

(Savitri Ratho)
Judge

