

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No.5 of 2018 and MATA No. 8 of 2018

MATA No.5 of 2018

Sasmira Kumar Sahani

.....

Appellant

Mr. D. Nayak, Advocate

Versus

Sanghamitra Sahani

.....

Respondent

Mr. B.C. Panda, Advocate

MATA No.8 of 2018

Sanghamitra Sahani

.....

Appellant

Mr. B.C. Panda, Advocate

Vrs.

Sasmir Kumar Sahani

.....

Respondent

Mr. D. Nayak, Advocate

CORAM:

**JUSTICE S. TALAPATRA
JUSTICE SAVITRI RATHO**

ORDER

01.11.2022

Order No.

09.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. B.C. Panda, learned counsel appearing for the Appellant in MATA No.8 of 2018 and for the Respondent in MATA No. 5 of 2018 and also heard Mr. D. Nayak, learned counsel who has appeared for the Appellant in MATA No. 5 of 2018 and for the Respondent in MATA No.8 of 2018.

3. It may be noted that Mr. Nayak, learned counsel has entered the appearance today by filing the power in the proceeding. The power (the Vakalatnama) has been taken on record.

4. In these Appeals, the judgment dated 07.12.2017 delivered in Civil Proceeding No. 431 of 2013 by the Judge, Family Court, Cuttack has been challenged.

5. It may be noted that neither of the Appellants has challenged the decree of divorce. In both the Appeals, the quantum of alimony has been questioned. In MATA No. 5 of 2018, the Appellant (Husband) has challenged the quantum for being exorbitant vis-à-vis his income. In MATA No. 8 of 2018, the Appellant has challenged the same judgment in respect of the quantum of alimony for being inadequate vis-à-vis income of the Respondent and the need of the Appellant. From the income tax return filed by the Appellant in MATA No. 5 of 2018, it transpires to us that the income of the husband per month, on the date of passing of the decree of divorce, was around Rs.40,000/-. It is also brought to our notice that the amount as determined as the permanent alimony, by the Judge, Family Court, Cuttack has been already paid to the Appellant in MATA No.5 of 2018.

6. Mr. B.C. Panda, learned counsel appearing for the Appellant in MATA No.8 of 2018 has submitted that for making the said payment, the Appellant in MATA No.5 of 2018 took about 4 years. The value of the alimony has thus been diminished. That apart, according to Mr. Panda, learned counsel, the standard of the livelihood that the Appellant in MATA No. 8 of 2018 was enjoying in her matrimonial life is expected to be maintained. The Apex Court in the case of ***Chaturbhuj vs Sita Bai: (2008) 2 SCC 316***, has observed as under:

*“...Where the personal income of the wife is insufficient she can claim maintenance under Section 125 Cr.P.C. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. In *Bhagwan v. Kamla Devi* (AIR 1975 SC 83), it was observed that the wife should be in a position to maintain standard of living which is neither luxurious nor penurious but what is consistent with status of a family.....”* [Emphasis added]

7. Another decision that was pressed into service by Mr. Panda, learned counsel is the case of ***Raj Telreja vrs. Kavita Talreja***, [judgment dated 24.04.2017 delivered in Civil Appeal No. 10719 of 2013]. It has been observed by the Apex Court in the said judgment, in paragraph 12, as follows:

“12. Though we have held that the acts of the wife in filing false complaints against the husband amounts to cruelty, we are, however, not oblivious to the requirements of the wife to have a decent house where she can live. Her son and daughter-in-law may not continue to live with her forever. Therefore, some permanent arrangement has to be made for her alimony and residence. Keeping in view of the status of the parties, we direct that the husband shall pay to the wife a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) as one time permanent alimony and she will not claim any further amount at any later stage. This amount be paid within three months from today. We further direct that the wife shall continue to live in the house which belongs to the mother of the husband till the husband provides her a flat of similar size in a similar locality. For this purpose, the husband is directed to ensure that a flat of the value up to Rs.1,00,00,000/- (Rupees One Crore Only) be transferred in the name of his wife and till it is provided, she shall continue to live in the house in which she is residing at present.”

[Emphasis added]

8. The above observation of the Apex Court is context-specific, none the less, it lays down a general framework to be used as the tool.

9. Be that as it may, the standard of life is a well-tested tool for the purpose of determining the alimony or the maintenance in the matrimonial suit.

10. According to Mr. Panda, learned counsel, the total alimony should have been at least Rs.20,00,000/- in the present context.

11. Mr. Nayak, learned counsel appearing for the Appellant (Husband) in MATA No. 5 of 2018 has put forward serious resistance against such prayer by contending that the husband does not have resource to provide that amount as alimony. Apart that, he has dependants in the family. He has exhausted all his resources for making payment of Rs.10,00,000/- as alimony to the Appellant in MATA No. 8 of 2018.

12. Mr. Nayak, learned counsel has pointed out that the wife is competent, enough to secure a good job as she is a Science Graduate with Diploma in Computer Applications.

13. Further, it has been asserted by Mr. Nayak that he has no resource except the salary he draws. We have made a comparative study of the status of the parties. As we have already noted from the income tax return filed by the Appellant in MATA No.5 of 2018, it is apparent that the Appellant is earning at least a sum of Rs.40,000/- per month.

14. Thus, we are in a position to comprehend the resources of the Appellant, in MATA No.5 of 2018. Taking a holistic view, we think it would be apposite to enhance the permanent alimony by Rs.4,00,000/- (Rupees Four Lakhs only). This additional alimony shall be paid by the Appellant in MATA No.5 of 2018 in addition to that the sum of Rs.10,00,000/- has been paid by now. We accommodate the Appellant in MATA No.5 of 2018 to pay the said enhanced amount of Rs.4,00,000/- in two instalments at Rs.2,00,000/- each. First instalment shall be paid within three months from today and the final instalment shall be made within six months from today, without fail. In the event of failure to pay the said additional amount, the decree shall be treated as a money decree and the said amount to the extent of Rs.4,00,000/- shall carry interest @ 6% from the date of the decree of divorce i.e. 07.12.2017 till the payment is made.

15. We also direct the Appellant in MATA No.5 of 2018 to return *Streedhan* as assailed under Section 27 of the Hindu Marriage Act, 1955 and lying in the custody of the Appellant in MATA No.5 of 2018 within a period of two months from today and for that purpose, the notice may be sent to the Appellant in MATA No.8 of 2018 by informing the date when such materials will be returned to her.

16. In view of the aforesaid reasons, the MATA No.5 of 2018 is dismissed. We partly allow MATA No.8 of 2018, subject to the observation as made above.

17. Draw the decree accordingly. Physical records, if received, be sent down.

18. Urgent certified copy of this order be granted on proper application.

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