

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No.26 of 2020,

MATA No.28 of 2013

And

MATA No.30 of 2020

MATA No.26 of 2020

Simmi Ghosh

.... Appellant

Mr.A.C.Panda, Advocate

-versus-

Saikat Das

.... Respondent

Mr.P.S.Nayak, Advocate

MATA No.28 of 2013

Saikat Das

.... Appellant

Mr.P.S.Nayak, Advocate

-versus-

Simmi Ghosh and another

.... Respondents

Mr.A.C.Panda, Advocate

MATA No.30 of 2020

Simmi Ghosh

.... Appellant

Mr.A.C.Panda,, Advocate

-versus-

Saikat Das

.... Respondent

Mr.P.S.Nayak, Advocate

CORAM:

SHRI JUSTICE S. TALAPATRA

SHRI JUSTICE B. P. ROUTRAY

ORDER

29.6.2022

Order No.

8.

1. These matters are taken up through Hybrid mode.

2. All these appeals, being MATA No.26 of 2020, MATA No.28 of 2013 and MATA No.30 of 2020 arise out of judgments delivered on 25th January, 2020 in Civil Proceeding No.163 of 2013, on 16th February, 2013 in Civil Proceeding No.64 of 2011 and on 25th January, 2020 in Civil Proceeding No.308 of 2014, passed by the Judge, Family Court, Rourkela and were proposed to be combined for disposal by a common judgment as those matrimonial suits between the same parties. But at the outset Mr.P.S.Nayak, learned counsel appearing for the Appellant in MATA No.28 of 2013 has submitted that he has instructions to not press this appeal in view of the order dated 4.4.2022 passed by this Court. Accordingly, MATA No.28 of 2013 stands dismissed as not pressed.

3. Mr.A.C.Panda, learned counsel appearing for the Appellant in MATA No.30 of 2020 has fairly submitted at the threshold that in view of the order dated 4.4.2022, this appeal, for all purposes, has become infructuous. Accordingly, MATA No.30 of 2020 stands dismissed as infructuous.

4. Now we are only concerned with the appeal being MATA No.26 of 2020. In view of the order dated 4.4.2022, this appeal has been confined the solitary ground, relating to quantum of the

alimony or the maintenance. Therefore, the challenge against the findings relating to dissolution of marriage has been withdrawn by the Appellant of MATA No.26 of 2020.

5. Mr. Panda, learned counsel appearing for the Appellant has submitted that the alimony as quantified by the Judge, Family Court is unsustainable being grossly inadequate. Mr.Panda has produced a brief note of submissions providing therein a calculation in support of higher quantum of alimony. According to the said calculation, the alimony shall stand at Rs.56,77,440/-. That apart, Mr.Panda, learned counsel has persuasively argued that for the minor son who is now 12 years of age, there should be separate maintenance. While determining the maintenance for the minor child, this Court may take note that the minor son is studying in D.P.S. at Rourkela. In support of his contention, Mr.Panda, learned counsel has placed his reliance on a few Supreme Court decision. In ***U.Sree vs.U.Srinivas***, [judgment dated 11.12.2012 delivered in Civil Appeal Nos.8927-8928 of 2012], the Apex Court has observed, inter alia that, there is no arithmetic formula which can be adopted as there cannot be any mathematical exactitude. It shall depend upon the status of the parties, their respective social needs, the financial capacity of the husband and other obligations. While

dealing with the concept of permanent alimony, the Apex Court has observed that the Court is required to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party. While referring to a decision of this Court in *Smt.Pratima Mohapatra @ Nepak vrs. Dibakar Mohapatra*, [judgment dated 2.12.2014 delivered in MATA No.93 of 2012], Mr.Panda, learned counsel draws our attention to the observation formulated by this Court having considered the *Vinny Parmvir Parmar vrs. Parmvir Parmar*, reported in AIR 2011 SC 2748. It has been observed therein, that while quantifying the alimony, *Vinny Parmvir Parmar's* case should be taken as a guide. In the decision, the following passage from *Vinny Parmvir Parmar* (supra) has been reproduced:

“12. As per Section 25, while considering the claim for permanent alimony and maintenance of either spouse, the husband's own income and other property, and the income and the income and other property of the applicant are all relevant material in addition to the conduct of the parties and other circumstances of the case. It is further seen that the court considering such claim has to be consider all the above relevant materials and determine the amount which is to be just for living standard. No fixed formula can be laid for fixing the

amount of maintenance. It has to be in the nature of things which depend on various facts and circumstances of each case. The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay, having regard to reasonable expenses for his own maintenance and others whom he is obliged to maintain under the law and statute. The courts also have to take note of the facts that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and mode of life she was used to live when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party. These are all the broad principles courts have to be kept in mind while determining maintenance or permanent alimony.”

6. As we understand there is no quarrel over these aspects. Even Mr.Nayak, learned counsel has not opposed to those broader parameters. Mr.Panda, learned counsel has submitted that the Appellant is unemployed and she is taking care of his only son and as such, she needs financial security and the reasonable comfort in life. The amount that has been determined by the court below is so inadequate, it will no way help her to maintain minimum standard of life. Hence, the said decision stands only to frustrate the very object of Section 25(1) of the Hindu Marriage Act, 1955. According to Mr.Panda, learned counsel even though there he been no inquiry about the income or resources of the respondent, in the impugned judgment dated 16.2.2013 delivered in Civil Proceeding No.64 of 2011, the Judge, Family Court has observed that income

of the husband will be around Rs.38,000/- per month and on such foundation observation, the impugned alimony has been quantified.

7. In the judgment delivered in C.P.No.64 of 2011 which was instituted under Sections 18 & 20 of the Hindu Adoption and Maintenance Act, direction was issued on the Respondent to pay Rs.6,000/- per month to the Appellant and Rs.2000/- to their minor son, who was the petitioner no.2, in the said C.P.No.64 of 2011.

8. According to Mr.Panda, what was the income in 2012-13 is bound to have swelled further and as such, even if, the monthly income is considered to be Rs.59,000/-, for which a document has been relied on also by the Appellant, the said amount of alimony as calculated by the Appellant would rise to the extent as reflected in the note of submission. Mr.Nayak, learned counsel has submitted that since there was no inquiry, the respondent could not place the materials in the evidence or in the records that he is out of employment since 2020, and till 2020 he had complied the directions of the Family Court in paying the maintenance. Till date he has continued to comply as he has been paying the said amount of maintenance. By the judgment dated 25.1.2022 delivered in C.P.No.163 of 2013 which was instituted by the respondent herein

under Section 13(1)(ia) & (i-b) of the Hindu Marriage Act, 1955, the impugned direction for payment of alimony has been issued on the respondent. The respondent has been directed to pay a sum of Rs.7,00,000/- to the wife within two months, failing which the authority to recover was granted. The Appellant herein felt seriously aggrieved and preferred the instant appeal challenging the legality of such determination.

9. Mr. Nayak, learned counsel has quite robustly submitted that when the respondent is out of employment, any property belonging to his parents, even if is passed on, will not give him any additional income. No doubt, that only extend the sense of financial security to some extent. Hence, the alimony may not be enhanced beyond any limit, which cannot be paid by the Respondent. If the alimony is enhanced to such extent, that it will affect the very living of the respondent, that would be untenable. In this backdrop, the counsel for the respondent has stated that the respondent has instructed him to propose an enhancement by Rs.5,00,000/- in addition to what has been given by the Judge, Family Court. But Mr.Panda, learned counsel has straight away rejected the said proposal stating that, the wife would not agree any amount to alimony less than Rs.70,00,000/-.

10. We have given our anxious considerations to the rival contentions, in respect of the alimony. Having regard to the broader parameters as set up by the apex Court, we are of the view that we have to take a balanced view and we cannot just assume that the Respondent is employed. There is no legal evidence. The projection of fact based on the admitted fact is one thing, but the proven facts are entirely different. In absence of the proved facts, no doubt the court can do some guess work but such guess work should not be wild to frustrate the very object, i.e., executability of the decision of the Court. Having regard to that and guessing the income that the Respondent may generate at this point of time, we are of the view that the Respondent shall pay alimony to the extent of Rs.17,00,000/- at a time to the Appellant within a period of three months from today. In the event failure of payment as stipulated the appellant may proceed for execution for purpose of recovery. If this amount is not paid within the time stipulated by us, that would carry interest at the rate of 7% per annum from today till the money is realized. It is to be noted that the amount that has already been paid i.e., Rs.7,00,000/- should be deducted from the total amount of Rs.17,00,000/- as enhanced. In addition thereto, the Respondent is directed to pay a sum of Rs.6,000/- per month to their minor child

who is now 12 years of age within 7th day of every month. The amount may be transferred to the account of the Appellant if provided to the Respondent. The final direction issued in C.P. No.64 of 2011 is thus adjusted. Having observed this, this appeal being MATA No.26 of 2020 is partly allowed.

11. Before we part with the records, the respondent is further directed to return *Streedhan* including the gold ornaments, if any, in his custody forthwith, but by any rate, within 31st July, 2022.

12. Draw the decree in respect of all the appeals in view of the observation, declaration and direction as made above.

13. LCRs be returned thereafter.

14. Pending interlocutory applications, if any, stand disposed of.

(S. Talapatra)
Judge

(B.P. Routray)
Judge