

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No. 40 of 2020

Smt. Madhusmita Swain

.....

Appellant

Mr. S.K. Dash, Advocate

-versus-

Tapas Kumar Dalei

.....

Respondent

Mr. A.K. Panigrahi, AGA

CORAM:

JUSTICE S. TALAPATRA

JUSTICE B.P. ROUTRAY

ORDER

12.07.2022

Order No.

11.

1. This matter is taken up through hybrid mode.
2. This is an appeal under Section 19(I) of the Family Courts Act, 1984 arising from the judgment dated 08.04.2018 delivered in C.P. No.883 of 2017 by the Judge, Family Court, Bhubaneswar.
3. Pursuant to the said judgment, the decree of divorce has been passed subject to condition that the decree will come into effect only on payment of alimony of Rs.2,00,000/- (Rupees two lakhs). It has been stated by Mr. A.K. Panigrahi, learned counsel appearing for the Respondent that, the said amount of alimony had been deposited in the Court of the Judge, Family Court, Bhubaneswar. There is no dispute that after the appeal period was over, the Respondent contracted the second marriage. As such, the Appellant has not projected any challenge against the finding based on which the decree of

divorce has been passed. But she has seriously questioned the amount of alimony as determined by the Judge, Family Court, Bhubaneswar.

4. Mr. S.K. Dash, learned counsel appearing for the Appellant has submitted that the said amount is not only inadequate, but it may not help the Appellant to remain away from destitution.

5. Having regards to the financial capability of the Respondent, by the order dated 29.06.2022, we floated a tentative proposal for increasing the alimony to the extent of Rs.5,00,000/-. Today is fixed for the response of the Respondent in particular.

6. Mr. Panigrahi, learned counsel appearing for the Respondent has, on instruction, submitted that the Respondent has expressed inability to pay an additional sum of Rs.3,00,000/- making the total alimony to Rs.5,00,000/- as proposed by us. However, the Respondent has agreed to pay further amount of Rs.2,00,000/- as alimony taking the total alimony to Rs.4,00,000/- (Rupees four lakhs).

7. Mr. S.K. Dash, learned counsel appearing for the Appellant did not agree initially to the said proposal and has left the matter for consideration of the Court. Even though, we are not satisfied, but taking a view based on the financial capacity or capabilities of the Respondent whose earning totally depends on his agricultural income, we direct the Respondent to pay the total alimony of Rs.4,00,000/- (Rupees

four lakhs) out of which, a sum of Rs.2,00,000/- has already been paid to the Appellant, in terms of the decree of the Family Court. The additional amount of Rs.2,00,000/- shall be paid within a period of three months from today. If the said amount is not paid within that period of three months from today, the Respondent shall be liable to pay interest @ 7% per annum over the said amount, from the date of decree to the date of actual realization. The decree, as would be drawn up, shall be treated as the money decree for purpose of its execution. The Appellant will be entitled to realize the said amount through the process of the Court.

8. In view of the above observation, this appeal stands partly allowed. Draw the decree accordingly. Return LCRs thereafter.

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

(S. Talapatra)
Judge

(B.P. Routray)
Judge