

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No. 60 of 2022

Manoj Kumar Moharana* *Appellant

Mr. Sangram Mishra, Advocate

-versus-

Subhalaxmi Moharana* *Respondent

Mr. P.K. Mohanty, Advocate

**CORAM:
JUSTICE S. TALAPATRA
JUSTICE M. S. SAHOO**

ORDER

Order No.

11.08.2022

- 05.** **1.** This matter is taken up through hybrid mode.
- 2.** This is an appeal U/s.19(1) of the Family Courts Act, 1984 challenging a part of the judgment dated 28.02.2022 delivered in C.P. No.659 of 2018 by the Judge, Family Court, Cuttack.
- 3.** There is no dispute that C.P. No.10 of 2017 [renumbered as C.P. No. 177 of 2017] was filed by the appellant in the court of the Judge, Family Court, Jajpur U/s. 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. The respondent in this appeal had instituted another proceeding being C.P. No.659 of 2018 U/s. 13(1) of the Hindu Marriage Act, seeking divorce on the ground of cruelty. There is no dispute that the parties had struck a settlement and filed a compromise petition on 11.01.2022. It was agreed by the parties that all the litigations will be withdrawn in terms of the compromise petition dated 11.01.2022 [Annexure-3 to the memorandum of appeal]. Following the said terms of settlement the

Judge, Family Court, Cuttack passed the said judgment dated 28.02.2022 incorporating following paragraph being para-6 in the said judgment :

“In view of the above statement of the petitioner, it is held that she was subjected to cruelty by the respondent and hence, she is entitled to get a decree of divorce in her favour. Hence, it is ordered.”

ORDER

“The civil proceeding is allowed on contest without any cost. The marriage solemnized between the petitioner and respondent on 06.05.2015 stands dissolved. No order passed regarding permanent alimony as the petitioner has not claimed the same in view of the compromise effected between both the parties.”

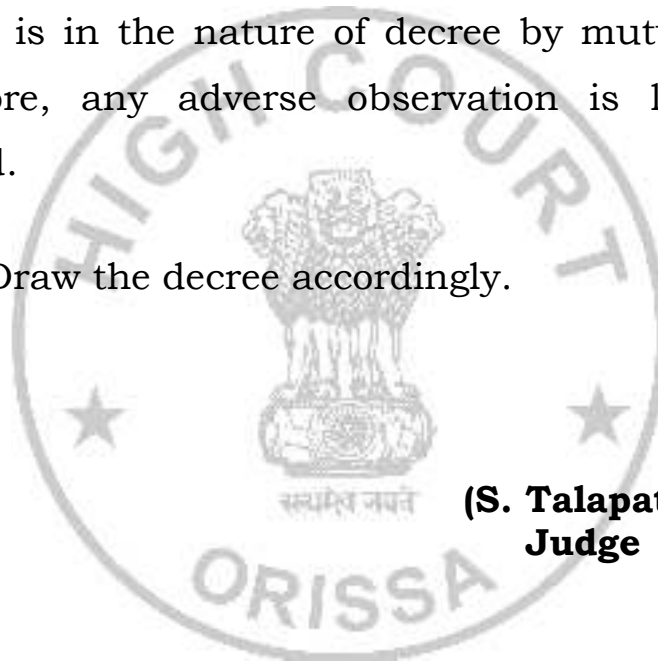
5. Mr. Sangram Mishra, learned counsel for the appellant has submitted that the observation as made in the above quoted part of the judgment that *the respondent was subjected to cruelty* is totally uncalled for, in view of the settlement, struck between the parties. It was the duty of the Court to pass the order according to the terms of the settlement, not beyond that.

6. Mr. P.K. Mohanty, learned counsel appearing for the respondent has acceded by stating that such observation is totally uncalled for, in the circumstances.

7. Accordingly, this appeal stands allowed by deleting the part viz. “it is held that she was subjected to cruelty by the respondent and hence, in her favour. Hence, it is ordered.” from para-6 of the impugned judgment. The first part of para-6 shall now read as “In view of the above statement of the petitioner, she is entitled to get a decree of divorce. Hence it is ordered.”

8. Further it is clarified that the decree of divorce as issued, is in the nature of decree by mutual consent. Therefore, any adverse observation is liable to be avoided.

Draw the decree accordingly.



(S. Talapatra)
Judge

(M.S. Sahoo)
Judge