

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No.48 of 2019 & MATA No.49 of 2019

MATA No.48 of 2019

Mrs. U. Anuradha

.....

Appellant

Mr. B. Nayak, Adv.

-Versus-

U. Srinivas Rao

.....

Respondent

Mr. Manoj Kumar Panda, Adv.

MATA No.49 of 2019

Mrs. U. Anuradha

.....

Appellant

Mr. B. Nayak, Adv.

-Versus-

U. Srinivas Rao

.....

Respondent

Mr. Manoj Kumar Panda, Adv.

CORAM:

JUSTICE S. TALAPATRA

JUSTICE M.S. SAHOO

ORDER

26.08.2022

Order No.

06.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard Mr. Biswajit Nayak, learned counsel appearing for the appellant and also Mr. Manoj Kumar Panda, learned counsel appearing for the respondent in both the appeals being MATA No.48 of 2019 and MATA No.49 of 2019. The aforementioned appeals are combined for disposal by a common Judgment, as those appeals arise from the common Judgment dated 18.09.2018 delivered in Civil Proceeding No.185 of 2016 and Civil Proceeding No.167 of 2014 by the Judge, Family Court, Rourkela, Sundargarh. By the said common Judgment, the suit instituted by the respondent being the Civil Proceeding 185 of 2016 has been decreed with direction to the respondent to pay a sum of Rs.3,00,000/- as permanent alimony to the appellant within 2 months from the date of the said Judgment. It has

been further directed that the respondent shall pay monthly maintenance of Rs.3,000/- to his minor child within first week of each succeeding month till he attains majority. Failure in payment of maintenance allowance would permit the appellant [the respondent in the matrimonial suit] to realize the said amount following the due process of law. Thus, the Civil Proceeding being 167 of 2014 which was instituted by the appellant under Section 18 (1) and 18 (2) of the Hindu Adoption Maintenance Act, 1956 was decreed to that extent. By these appeals the said Judgment as regards the permanent alimony and monthly maintenance allowance in favour of the appellant's son has been challenged.

3. For purpose of appreciating grounds of objection, let us introduce the essential facts in the respective suits. As stated earlier, the MATA No.49 of 2019 emerges from the Judgment dated 18.09.2018 delivered in Civil Proceeding No.185 of 2016. The said suit was instituted for dissolution of marriage between the appellant and the respondent under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. It is apparent that the ground that was taken for divorce is cruelty. According to the respondent, who brought the suit against the appellant, after marriage which was solemnized on 17.09.2019 he was treated with severe cruelty including physical assaults and mental torture. On 24.03.2013, the appellant left her matrimonial home with all her jewelries, valuable articles and clothes with the new born child and went to her paternal home. Since then, she never visited the respondent herein. Being persuaded by the circumstances, the respondent [the petitioner in C.P. No.185 of 2016] had instituted another suit being C.P. No.213 of 2013 under Section 9 of the Hindu Marriage Act. The said suit was decreed on 17.11.2014 directing the appellant herein to join the company of the respondent within 2

months from the said order. But the said decree, according to the respondent herein was not complied by the appellant. After more than one year, the said suit for divorce was filed on 25.07.2016. Thus, the respondent took a specific ground that there had been no intention of the appellant to reconstruct the marital life. Even the said decree dated 17.11.2014 directing the appellant to join the respondent herein was not challenged.

4. By the impugned Judgment, the Judge, Family Court, Rourkela, Sundargarh has clearly observed that *a decree of restitution of conjugal right was passed in favour of the husband petitioner but the wife respondent did not join in the society of the husband petitioner within a period of 1 year or upward after passing of such decree of Restitution of Conjugal Rights. Hence, the petitioner has probalised and made out a case under Section 13 (1-A) (ii) of the Hindu Marriage Act.*

5. By the said provision, it has been clearly postulated that if a decree of restitution of conjugal right is disobeyed by one spouse, the other spouse on that ground alone can apply for decree of divorce.

6. It may not be out of place to submit that even though a plea was raised by the appellant that for some time he had joined the respondent herein, pursuant to the said decree of restitution but such statement was first introduced while she testified in the trial. In her written statement, she did not raise that claim. As a result, the Judge, Family Court, Rourkela has categorically observed as under:

“A claim was made by the wife-respondent that she joined the company of her husband-petitioner as per direction of the decree of this Court, but subsequently she was tortured, for which she was forced to left (sic) the matrimonial home. But that plea has not been pleaded in the written statement filed by her in Civil Proceeding

No.185 of 2016 which was filed on 04.02.2017. So without proper pleading a party cannot lay evidence nor [advance] submission during argument. In such [in that regard] circumstances, this Court has no option but to preclude itself from accepting the submission so made by the wife-respondent.”

7. The respondent herein proved his case by the judicial records and the oral evidence that after the decree of restitution of conjugal life was issued, the appellant never joined him in compliance of the direction. Thus, the decree of divorce was issued in favour of the respondent.

8. The suit being filed by the appellant herein being Civil Proceeding No.167 of 2014 under Sections 18 (1) and 18 (2) of the Hindu Adoption and Maintenance Act, 1956 was decreed, directing the respondent to pay the permanent alimony of Rs.3,00,000/- within 2 months to the appellant and to pay monthly maintenance of Rs.3,000/- to the minor son of the appellant within first week of every succeeding month till the minor attains the majority. The authority was conferred on the appellant to realize the money following the due process in the event of failure of payment of monthly maintenance allowance to her son. By means of this appeal being MATA No.48 of 2019, the appellant has prayed before this Court to interfere with the said common Judgment dated 18.09.2018 as the Family Court, Rourkela “has miserably failed to award proper alimony to the appellant and monthly maintenance to the minor child. In the appeal being MATA No.49 of 2019, the appellant has challenged the said Judgment as the Judge, Family Court, Rourkela has dissolved the marriage by issuing a decree of divorce”. According to the appellant *“the respondent has not laid sufficient evidence and not exhibited sufficient documents to establish the allegation of cruelty.*

9. We have heard Mr. Biswajeet Nayak learned counsel appearing for the appellant in appeal being MATA No.49 of 2019 and MATA No.48 of 2019 and also the submission of Mr. M.K. Panda, learned counsel appearing for the respondent in response, in both the appeals. At the outset, it may be noted and on the basis of the pleadings of both the suits, has referred before, the following issues were framed for purpose of adjudication:

Issues

- i) Whether there has been no restitution of conjugal rights as between the parties for a period of one year or upwards after passing of a decree of restitution of conjugal rights?
- ii) Whether, the respondent, after solemnization of marriage treated the petitioner with cruelty?
- iii) What would be just and appropriate maintenance/permanent alimony, if divorce is granted?

10. After having recorded the evidence and on appreciation thereof, the above issue No.1 was decided in favour of the respondent even the issue No.2 as noted above has been decided in favour of the respondent. However, issue No.3, as discussed before, has been decided in favour of the appellant.

11. Mr. Nayak, learned counsel appearing for the appellant has asserted that there is no legal evidence to show that the appellant did not join the respondent herein in compliance to the decree of restitution of conjugal rights and as such, the case of the respondent came within the four corners of Section 13(1-A)(ii) of the Hindu Marriage Act, 1955. The said provision reads *inter alia*, as under:

“(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of 1 year or upwards after passing of a decree for restitution of conjugal rights in a proceeding to which they were parties. This clause (ii) follows the principle provision of Section 13(1)(a) of the Hindu Marriage Act, 1955 which lays down that either party to a marriage, where solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground. On the ground as provided under Clause (ii) as produced before.”

As such, as far as the decree of divorce is concerned as passed in Civil Proceeding No.185 of 2016 is concerned, we do not find any infirmity. The Judge, Family Court however, as we have noted, did not make discussion on the aspect of cruelty separately, even though the ground was pleaded by the respondent. The Judgment has been passed in the premises of Section 13(1A) (ii) of the Hindu Marriage Act.

12. Mr. Nayak, learned counsel has contended that the determination of alimony for the appellant and the maintenance allowance for the child is unjust and requires interference from this Court.

13. From the other side, Mr. Panda, learned counsel has strongly opposed that submission and in order to repeal, it has been stated that the respondent has been working as the *Khalasi* under Indian Railway and after deduction, he gets monthly salary around 30,000/- per month. As such, the said determination of alimony and maintenance is proportionate to the financial status of the respondent and the need of the appellant.

14. Having appreciated the financial ability of the respondent, we do agree with Mr. Nayak, learned counsel for the appellant. For

purpose of redetermination, we are to look into the age of the appellant, who is now 37 years. She has a long life to spend. That apart, we have taken into consideration the cost of a modest livelihood.

15. Having regard to those aspects, we are of the view that the permanent alimony be enhanced to Rs.10,00,000/-. Accordingly, the respondent is directed to pay the said permanent alimony within a period of 2 months from the day of the decree, to the appellant. In the event of failure, the appellant will be at liberty to recover this alimony by the process of the Court.

16. In addition, we would add that interest at the rate 7% per annum shall be chargeable if the permanent alimony is not paid within the above stipulated period. So far the maintenance allowance of the child of the parties is concerned, we are not inclined to interfere with, but we should make it abundantly clear the said direction as regards the monthly maintenance allowance be deemed to have been passed by the Judge, Family Court under Section 20 of the Hindu Adoption and Maintenance Act, 1956 in as much as, the relief of maintenance as prayed is covered by Section 20 of the Hindu Adoption and Maintenance Act. Omission to mention the appropriate provision, cannot be the ground for denying the relief.

17. In terms of the above, both the appeals are disposed of.

18. Draw the decree accordingly.

(S. Talapatra)
Judge

(M.S.Sahoo)
Judge



