

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No.70 of 2022

Satya Shankar Panda

....

Appellant

Mr.S.M.Patanaik, Advocate

-versus-

Tanya Mishra

....

Respondent

Mr.Arijit Mishra, Advocate

CORAM:

SHRI JUSTICE S. TALAPATRA

SHRI JUSTICE B. P. ROUTRAY

ORDER

28.6.2022

Order No.

- 04.
1. The matter is taken up through Hybrid mode.
 2. Heard Mr.S.R.Patanaik, learned counsel appearing for the Appellant and Mr.A.Mishra, learned counsel appearing for the Respondent.
 3. This is an appeal from the order dated 21st March, 2022 delivered in C.P.No.959 of 2018 by the Judge, Family Court, Bhubaneswar. By the said order, the objection relating to the maintainability of the matrimonial suit raised under Order 7 Rule 11 of the CPC has been rejected. In the said order, the Judge, Family Court has clearly observed that Order 7 Rule 11(a) of the CPC provides that the plaint shall be rejected where it does not disclose a cause of action. Order 7 Rule 11(d) provides that the plaint shall be

rejected where the suit appears from the statements in the plaint to be barred by any law. Provisions of Order 7 Rule 11 CPC are imperative and can operate at any stage of the suit. Reading of the petition filed under Section 12(1)(a) and 13(1) (i-a) of the Hindu Marriage Act as a whole reveals that it constitutes allegations of impotency and cruelty of both mental and physical against the respondent-husband for which trial is inevitable to find out the truth thereof to see if petitioner-wife is entitled to get the reliefs sought for. According to the Judge, Family Court, these are two alternative pleas. It has been further observed that if the prayer for annulment of marriage by a decree of nullity on the ground of non-consummation of the marriage owing to impotency of the respondent-husband so far any reason cannot be entertained, then the alternative prayer for dissolution of the marriage on the ground of cruelty caused towards the petitioner by the respondent-husband may be considered if the petitioner-wife becomes able to establish the grounds for her relief of dissolution of the marriage. The said finding has been challenged in this appeal.

4. According to Mr.Pattnaik, learned counsel appearing for the Appellant, these two reliefs are irreconcilable and these provisions viz. Section 12(1)(a) and Section 13(1)(i-a) of the Hindu Marriage Act are distinctly separate for lunching the proceedings - one for

annulment to the marriage and other for dissolution of the marriage. On the first blush, the submissions appear very attractive, but the respondent herein, who is the petitioner in the proceeding being C.P.No.959 of 2018 has structured the petition consciously. If the first relief of annulment of marriage falls through, he would place the alternative relief of dissolution of marriage on the ground of cruelty towards the petitioner for denial of consummation of marriage. For this purpose, it will be appropriate to refer the prayers made in the petition. The prayers read thus:

“i) To annul the marriage by a decree of nullity or in the alternative pass a decree for dissolution of the marriage solemnized in between Petitioner and the Respondent;”

5. Therefore, it is not a case where the simultaneous reliefs, which were irreconcilable and flowed from two different sources of law. As such, we do not find any merit in the objection and, accordingly the appeal stands dismissed. The parties will join in the proceedings pending before the Judge, Family Court. Copy of this order be sent to the Judge, Family Court forthwith.

(S. Talapatra)
Judge

(B.P. Routray)
Judge