

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No. 71 of 2018

Sanjay Kumar Gagrai

.....

Appellant

Mr. S. Harichandan, Advocate

-versus-

B. Geetanjali

.....

Respondent

Mr. A. Pattanaik, Advocate

CORAM:

JUSTICE S. TALAPATRA

JUSTICE M.S. SAHOO

ORDER

22.09.2022

Order No.

06.

1. This matter is taken up through hybrid mode.
2. Heard Mr. S. Harichandan, learned counsel appearing for the Appellant and also heard Mr. A. Pattanaik, learned counsel appearing for the Respondent.
3. By means of this appeal, the judgment and order dated 31.03.2018 delivered in C.P. No.348 A of 2013 has been questioned. By the said judgment, on the ground of cruelty, the marriage that was subsisting between the parties has been dissolved at the instance of the Respondent herein.
4. Mr. Harichandan, learned counsel has at the outset has submitted that on instruction from the Appellant, he will abandon the challenge against the decree of divorce. In the wake of such submission, Mr. Pattanaik, learned counsel referred to the affidavit filed by the Respondent today in the

proceeding, which has been taken on record. It appears from the said affidavit that the Appellant has married one Sonia Paleya, whose detail has been given in Paragraph-2 of the said affidavit. Therefore, we can understand why the abandonment of the challenge has taken place. Before we embark on the grounds, we are persuaded to refer to a finding of the Judge, Family Court, Bhubaneswar in the judgment dated 31.03.2018 delivered in the said matrimonial suit. In the course of efforts taken under Section 9 of the Family Courts Act, 1984 specific proposals and acceptance had taken place. Section 9 lays down that, in every suit or proceeding, endeavour shall be taken by the Family Court, in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit. It has been further provided that, If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a settlement.

5. In Paragraph-7 of the judgment dated 31.03.2018, the Judge, Family Court, Bhubaneswar has recorded *inter alia* as follows:

“07. Points for determination No. ii & iii. To what other relief the petitioner is entitled? & Whether the suit for dissolution of marriage is maintainable?”

It is pleaded by the petitioner that her father had given rupees five lakhs and other valuables such as TV, Fridge, Cot, Sofa. Respondent has pleaded that there is no system of any dowry in that kolho community and that reverse bridge price of rupees one lakh was paid by him to the petitioner for winning the confidence of the petitioner. This payment of rupees one lakh by the respondent is found to be unbelievable for the reasons stated above. Simply because petitioner had not lodged any report against the respondent for the torture caused to her at Jamnagar it cannot be concluded that the petitioner was treated with dignity sought by a women in the marital society. It is pleaded by the respondent that both petitioner and the respondent had agreed for divorce on mutual consent. It is pleaded by the petitioner that respondent had agreed for paying rupees ten lakhs towards one time permanent alimony whereas petitioner had demanded rupees twenty lakhs towards permanent alimony. At this point it is pertinent to state that

petitioner has totally spent about two and half months in the company of the respondent.”

Thus, it has been observed by the Judge, Family Court, Bhubaneswar that, looking at the status of the parties as found from the records and the rising costs of the bare necessities and the period for which petitioner had stayed with the respondent and by resorting to guess work, it has been observed that the petitioner is entitled to get rupees ten lakhs from the respondent [the Appellant herein] towards one time permanent alimony.

6. Now, the solitary point remains to be addressed in the appeal is that what would be the quantum of the alimony, as the Appellant has withdrawn the challenge against the decree of divorce and the Respondent has not shown any agitation against the quantum determined by the Court below.

7. Mr. Harichandan, learned counsel for the Appellant has submitted that the Respondent herself had submitted one document before the Judge, Family Court as regards the income of the Appellant, but that was not considered. The Appellant had been working as a mechanical engineer with ESSAR. It has been stated before us that during the pandemic, he was laid off and as a result, his income has come truncated substantially.

8. As we have extracted the finding of the Judge, Family Court, Bhubaneswar that the Respondent has

categorically stated about an agreement between the parties on permanent alimony and the said statement nowhere has been refuted by the Appellant, at least, such statement has not been recorded by the Judge, Family Court. True it is that the said statement cannot be treated as admission under Section 17 of the Indian Evidence Act. But during the efforts taken by the Judge, Family Court, as is evident, the said understanding was tentatively arrived at. That was used correctly to explore the basis to quantify the permanent alimony. To a query from this Court, Mr. Harichandan, learned counsel for the Appellant has candidly submitted that it is true that the Appellant did not take further steps before the Judge, Family Court to get the record corrected or for modification of the said finding.

9. Even if that 'term' is not treated as admission or as the part of a concluded contract between the parties, since the Appellant is a mechanical engineer and he has remarried, we cannot consider other components of maintenance for the Respondent and as such, having regard to the status of the parties, the need of the Respondent, conduct of the parties as well as the contemplated financial resource of the Appellant, we think the quantification is not unjustified. Consequently, we decline to interfere with the amount of the permanent alimony.

10. Having observed thus, we find no merit in this appeal. Accordingly, the same stands dismissed.

11. Draw the decree accordingly.
12. The said amount shall be paid within a period of three months from the date of decree.
13. Urgent certified copy of this order be granted as per rules.

(S. Talapatra)
Judge

(M.S. Sahoo)
Judge

Murmu

