

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No.58 of 2019

Lopamudra Mohapatra

..... ***Appellant***
Ms. Sagarika Sahoo, Advocate

Versus

Ambika Prasad Mohapatra

..... ***Respondent***
Mr. S.K. Sahoo, Advocate

CORAM:

**JUSTICE S. TALAPATRA
JUSTICE SAVITRI RATHO**

**ORDER
18.11.2022**

Order No.

12.

1. This matter is taken up through Hybrid Mode.
2. Heard Ms. Sagarika Sahoo, learned counsel appearing for the appellant and also Mr. S.K. Sahoo, learned counsel appearing for the respondent.
3. Ms. Sahoo, learned counsel has, at the outset, apprised this Court that the appellant has remarried on 05.07.2022.
4. This appeal was filed challenging the quantum as determined by the Judge, Family Court, Bhawanipatna by the judgment and order dated 12.10.2018 passed in the Civil Proceeding No. 54 of 2016.

5. According to Ms. Sahoo, learned counsel, the said amount was not proportionate to the income of the respondent and the amount of alimony ought to have been much higher. She has asserted that the amount of alimony cannot be reduced merely because the appellant has remarried.

6. Mr. S.K. Sahoo, learned counsel appearing for the respondent has contended that the appellant has been earning a substantial sum. Moreover, she is now married to someone else.

7. To repel the said submission, Ms. Sahoo, learned counsel has relied on a decision of this court in **Nanigopal Chakravarty vrs. Renubala Chakravarty: AIR 1965 Ori 154**, wherein this Court had occasion to observe as follows:

“In case of payment of monthly or periodical sums, the Court can rescind such payments relating to the future payments only. Conferring power on the Court to annul future payments after accrual of cause of action as prescribed in Sub-section (3) of Section 25 of the Hindu Marriage Act, 1955 appears to be reasonable. The same argument, however, does not apply to rescission of an order granting gross sum, which would amount to annulment of a past liability and not a future one. Such annulment also would lead to an absurdity inasmuch as the past dues accruing in favour of the wife in between the decree and the remarriage cannot be rescinded under the sub-section as such the liability constituted an integral part of the gross sum decreed. The past and future liabilities constituting the

*gross sum are not severable. Rescission of such an indivisible liability cannot therefore be countenanced. It is for this reason, in **Blanche Somerset v. Charles George Bleach: AIR 1915 Bom 50** under the proviso to Section 37 of the Indian Divorce Act, it was held by Hayward J. that where gross sum of money is given to the wife, that is paid absolutely.”*

[Emphasis added]

8. The principle as culled out in **Nanigopal Chakravarty** (supra) may not apply in the present context. The sum of alimony as paid cannot be rescinded. It is not the case here. The appellant-wife, being aggrieved by the quantum of permanent alimony as determined by the impugned judgment, has filed this appeal under Section 19 (1) of the Family Courts Act, 1984. Hence, it cannot be held that the process for determination is concluded or this is a situation where the payment of alimony has been made. Now the case is whether the paid amount should be recovered or not. In **Nanigopal Chakravarty** (supra), it has been held that once the payment is made to the wife, the said amount can not be recovered. The appeal is continuation of the matrimonial suit. Hence, there is no finality in the determination.

9. In the circumstances, as noted above, this Court can revisit the quantum of alimony, in view of the change that occurred, in the

marital status. As the appellant has remarried, the alimony which has primarily been determined in consideration of the future need, cannot be sustained anymore. Having situated thus, we intend to reduce the alimony proportionately from Rs.5,00,000/- to Rs.1,00,000/-. The reduced amount shall be paid within a period of 30 days from today in the form of a demand draft, through the counsel of the appellant. In the event of failure in payment within stipulated time, the said amount shall carry interest @ 6 % from the date of decree till the payment is made.

10. Consequently, the appeal filed by the appellant is disposed of, in terms of the above observation and direction.
11. Registry is directed to draw the decree accordingly.
12. Urgent certified copy of this order be granted on proper application.

(S. Talapatra)
Judge

(Savitri Ratho)
Judge