

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA NO.72 OF 2019

Kanhu Charan Tudu ***Appellant***

Mr. Lalatendu Samantaray, Advocate

-versus-

Kamala Marandi ***Respondent***

None

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

ORDER

08.08.2022

Order No.

6. 1. This matter is taken up through hybrid mode.
2. Heard Mr. L. Samantaray, learned counsel appearing for the appellant.
3. It appears from the report of the Registry that the notice has been properly served on the respondent, but there is no representation.
4. By means of this appeal filed under Section 19 (1) of the Family Courts Act, 1984, the judgment and decree dated 20.02.2019 delivered in C.P.No.23 of 2017 by the Judge, Family Court, Baripada, has been questioned, as by the above judgment, the Judge, Family Court has directed the appellant to pay a sum of Rs.5,00,000/- to the wife as the permanent alimony within a period of two months. For dissolution of marriage which was registered under the Special Marriage Act, 1954, the appellant and the respondent filed a petition for divorce by mutual consent under Section 28 of the Special Marriage Act. It was agreed between the parties that the respondent will only take back her articles, but would not claim any permanent alimony.

5. Mr. Samantaray, learned counsel for the appellant has, at this juncture, submitted that the respondent is occupying a very high position in a corporate house and earning an attractive salary, and as such, she had voluntarily abandoned the claim for any maintenance/ alimony. The relevant clause of the settlement in this regard reads as follows :

“That, the one part has no claim against the other part relating to any claim of maintenance or permanent alimony but it is agreed by both parties that dowry articles, Pana etc if any will be returned back to each other.”

The respondent, namely, Kamla Marandi has testified in the court below and has proved that she had agreed to abandon the claim for any permanent alimony (see paragraph-7 of her examination-in-chief).

6. The respondent has not come forward to challenge the said decree. Neither has she complained before any forum that the appellant has not returned the articles as referred under the terms of settlement. Hence, the solitary question that is paramount in this appeal is whether, in absence of any application or oral representation any Court, while trying a divorce suit can grant on its own motion permanent alimony without affording any opportunity to the parties or without making any inquiry into the relevant factors for determination, particularly into the financial resource of the person against whom such order will be passed.

7. In the present case, despite the said agreement/settlement in respect of permanent alimony, the

Judge, Family Court has passed the said order of permanent alimony, by which, according to us, the Judge, Family Court has exceeded his jurisdiction.

8. Accordingly, we are persuaded to interfere with the judgment, so far as to the direction as regards the permanent alimony is concerned. The said direction stands quashed and set aside. The other parts of the judgment and decree are affirmed.

9. In terms of the above, the appeal stands allowed

Decree be drawn accordingly. LCRs be returned, if received.

(S. Talapatra)
Judge

(M.S. Sahoo)
Judge

Gs/Radha