

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No.34 of 2021

Pratima Behera

....

Appellant

Mr. D. Mohapatra on behalf of Mr. B.P. Tripathy, Adv.

-Versus-

Nirakar Behera

.....

Respondent

Mr. D.N. Pattnaik, Adv.

CORAM:

JUSTICE S. TALAPATRA

JUSTICE SAVITRI RATHO

ORDER

29.11.2022

Order No.

05.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard Mr. D. Mohapatra, learned counsel appearing on instruction of Mr. B.P. Tripathy, learned counsel for the appellant and also Mr. D.N. Pattnaik, learned counsel appearing for the respondent.
3. This is an appeal under Section 19 (1) of the Family Courts Act, 1984 from the Judgment dated 05.03.2021 as delivered in Civil Proceeding No.191 of 2019 by the Judge, Family Court, Khurda.
4. It is apparent from the Judgment itself that even after sufficient service of summons on the appellant, neither she appeared in person nor she got represented by any counsel on the day when the record was posted for her appearance i.e. 11.12.2019. So the proceeding continued ex-parte.
5. The matrimonial suit was filed by the respondent for grant of decree of divorce, on the ground of cruelty and desertion, within the

meaning of 13 (1) (ia) and (ib) of the Hindu Marriage Act, 1955. After recording the evidence, the Judge, Family Court decreed the suit by dissolving the marriage solemnized between the parties on 06.03.2011. Being aggrieved by the said Judgment dated 05.03.2021 the appellant has approached this court for setting aside the said Judgment and decree on the ground that due to the pandemic situation she was not in a position to go out and attend the court proceeding leaving her suckling baby at home.

6. Thereafter, she was completely disconnected and as a result, the decree ex-parte was passed. When this court queried Mr. Pattnaik, learned counsel that whether the respondent would seriously oppose the prayer of the appellant for remand and trial afresh, he has been fair enough to say that if a time frame is set up for disposal, he would not oppose such prayer, as set out in this appeal.

7. Having recorded the concession given by Mr. Pattnaik, learned counsel for the respondent, we set aside the impugned Judgment and decree respectively dated 05.03.2021 and 15.03.2021 delivered in Civil Proceeding No.191 of 2019 but we keep the matrimonial suit alive. We remand the said Civil Proceeding No.191 of 2019 to the court of the Judge, Family Court, Khurda for taking up the proceeding from the stage of filing of the written statement.

8. It is needless to say that the appellant, the respondent in the Civil Proceeding No.191 of 2019, shall be given the opportunity of filing the written statement. It is accordingly ordered.

9. As the said Civil Proceeding was filed in the year 2019, we would request the Judge, Family Court, Khurda to make all efforts to complete the proceeding within a period of 8 months from the date of

appearance of the parties. Since the counsel for the parties are before us, both the parties are directed to appear before the Judge, Family Court, Khurda on 19.12.2022.

10. It is made absolutely clear the parties will not receive any further notice from the Judge, Family Court, Khurda for their appearance in the proceeding.

11. The appellant is directed to file the written statement, if any, on 19.12.2022. No further accommodation shall be provided for filling the written statement, if not filed by or on the date as stipulated.

12. Having observed thus, this appeal stands allowed to the extent as indicated above. Draw the decree accordingly.

13. Send down the LCRs, if any, lying with the Registry.

14. A copy of this order be sent to the Judge, Family Court, Khurda forthwith.

15. An urgent certified copy of this order be granted to the counsel for the parties.

(S. Talapatra)
Judge

(Savitri Ratho)
Judge