

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No.125 of 2022

Prafulla Kumar Meher

.....

Appellant

Mr. Dinesh Kumar Patra, Adv.

-Versus-

Ranjita Meher & another

.....

Respondents

CORAM:

JUSTICE S. TALAPATRA

JUSTICE M.S. SAHOO

ORDER

30.08.2022

Order No.

01.

1. This matter is taken up through Hybrid Arrangement (Virtual/ Physical Mode).
2. Heard Mr. Dinesh Kumar Patra, learned counsel appearing for the appellant.
3. This appeal U/S. 19(1) of the Family Courts Act, 1984 arises from the order dated 21.04.2022 delivered in C.M.A. No.03 of 2016, renumbered as C.M.A. No.06 of 2019, from C.S. No.126 of 2014.
4. The C.M.A. as aforementioned was filed under Order-9, Rule-13 of the CPC for setting aside the ex parte judgment and decree of divorce dated 28.10.2015 delivered in the said suit (Annexure-3 to this Memorandum of Appeal).
5. Pursuant to the said judgment, the Senior Civil Judge, Sonepur decreed the suit filed by the appellant by way of granting divorce on the ground of cruelty and adultery. The appellant has stated that the respondents herein had not been deliberately attending

the proceeding being C.S. No.126 of 2014. As a measure of abundant caution, the substituted service was caused to attract the attention of the respondents in respect of pendency of the said suit for divorce, but the respondents did not appear. Consequent thereupon, on recording the evidence ex parte, the proceeding culminated into a decree of divorce on dissolution of marriage subsisted between the parties. The said ex parte order was challenged in C.M.A. as aforesaid on the ground that proper notice was not served on the respondent No.1. The said plea was accepted by the Judge, Family Court, Sonapur on observing as follows:

“In the present case, it is found that from the materials available on record that the notice was not duly served on the petitioner and therefore, she was prevented by sufficient cause for her non-appearance. From the testimony of P.W.1, it is found that by furnishing her wrong address, the Opp. Party managed to obtain the ex parte decree from the Court on false and frivolous grounds and subsequently she contacted with her lawyer and filed the present application. As per her evidence her non-appearance in C.S. No.126 of 2014 was not intentional but the situation was beyond her control. O.P.W.1 categorically stated that the P.W.1-the petitioner avoided to receive the notice and accordingly the notice was published on daily newspaper. It is found from the record that the O.P. has failed to prove the said newspaper in the present proceeding and therefore, it can never be said that notice was properly served on the petitioner.”

6. Having observed thus, ex parte judgment and decree have been set-aside by the impugned judgment with cost of Rs.1,000/-. The above finding has been challenged in this appeal.

7. It appears to us that even if the whole allegation of manipulation is taken into consideration, we may assume that the notice was not properly served on the respondent-wife. That apart, in

a matrimonial suit, the rule of the Court is that there should be an initiative to reconstruct the marriage. The estranged spouses may, during the proceeding, change their hard attitude and come forward for reunion. That is the reason why a special role has been attributed to the Family Courts. Even before entering into the issues to be decided, it has been directed that there should be a substantive effort to reconstruct the marriage or to bring out a conciliation between the parties.

8. Taking a holistic view, we are persuaded to hold that there is no infirmity in the impugned order dated 21.04.2022, Annexure-4 to the Memorandum of Appeal.

9. Accordingly, this appeal stands dismissed at the threshold.

10. Before parting with the records, we appreciate the anxiety of Mr. Patra, learned counsel appearing for the appellant that there is possibility of the suit being protracted for long time. The statute provides that the matrimonial suit be decided within six months.

11. We, therefore, direct the Judge, Family Court, Sonepur to proceed with expedition so that abovementioned matrimonial suit can be decided within the time frame of six months.

12. Draw the decree accordingly.

13. A copy of this order be sent to the Judge, Family Court, Sonepur.

(S. Talapatra)
Judge

(M.S. Sahoo)
Judge



