

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No.131 of 2022

Aswini Kumar Das

.....

Appellant

Mr. Amit Kumar Nath, Adv.

-Versus-

Smt. Banapriya Das

.....

Respondent

CORAM:

JUSTICE S. TALAPATRA

JUSTICE M.S. SAHOO

ORDER

13.09.2022

Order No.

03.

1. This matter is taken up through Hybrid Mode.
2. Mr. Amit Kumar Nath, learned counsel appears for the appellant, who has challenged the order dated 10.05.2020 as delivered in C.P. No.438 of 2015. By the said order, for non-compliance of the order dated 02.01.2022 passed in the said proceeding whereby the appellant herein has been directed to make payment of the maintenance allowance along with litigation expenses with arrears to the respondent herein, the suit has been dismissed.
3. The appellant did not make payment, despite the caution sounded by the Court that, if such payment was not made, his pleadings will be dismissed. As consequence of default, the said order has been passed.
4. Mr. Nath, learned counsel has submitted that the appellant is ready to pay the maintenance amount with arrears. But he should be

given the opportunity to prosecute the matrimonial suit that he had instituted and which has been dismissed by way of striking off the pleadings by the impugned order.

5. We do not find any apparent error in the order passed by the Judge, Family Court, Balasore. However, since the order as challenged in this appeal has been passed *per consequenti*, as noted above, the Judge, Family Court, application made to him along with the deposit of the entire maintenance amount and litigation cost, may invoke his jurisdiction for setting aside the order by which the suit instituted by the appellant has been default and allowing the appellant to continue with the proceeding. But, if the entire amount is not deposited, as the prerequisite of filing of such application as noted above, the Judge, Family Court will not pass any order. In that event, the impugned order be absolute.

6. With this observation and direction, this appeal stands disposed of.

7. Since this order cannot prejudice any right of the respondent, we are not issuing notice on the respondent before passing of this order. However, the Judge, Family Court, Balasore, on application in terms of the above, shall issue notice to the respondent and only on hearing the respondent, he would pass the orders.

8. In view of the above, this appeal stands disposed of.

(S. Talapatra)
Judge

(M.S. Sahoo)
Judge



