

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No.133 of 2022

Anandamaya Mishra

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Appellant

Mr. J. Sahu, Adv.

-Versus-

Nibedita @ Lina Mishra @ Guru

Respondent

Mr. R.K. Pati, Adv.

CORAM:

JUSTICE S. TALAPATRA

JUSTICE SAVITRI RATHO

ORDER

21.12.2022

I.A. No.205 of 2022

Order No.

07.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard Mr. J. Sahu, learned counsel appearing for the applicant as well as Mr. R.K. Pati, learned counsel appearing for the Opposite Party.
3. This is an application under Section 5 of the Limitation Act for condoning the delay of 66 days in preferring the appeal under Section 19(1) of the Family Courts Act, 1984 from the Judgment dated 15.01.2022 delivered in Civil Suit (MAT) No.34/77 of 2012-13 by the Judge, Family Court, Balangir.
4. On perusal of this application, it appears that the applicant had no knowledge of the Judgment dated 15.01.2022 till he received the notice for execution. On having the knowledge, he took all preparations for filing the connected appeal but by that time, the aforesaid delay had taken place.
5. Mr. Pati, learned counsel appearing for the Opposite Party has submitted that it is really strange that the applicant can take such stand, when he had participated in the proceeding. Hence, it is

presumed that the knowledge of the final outcome of the proceeding was within the knowledge of the applicant.

6. Be that as it may, considering that the appeal is in the nature of matrimonial appeal, we take a liberal view and condone the aforesaid delay.

7. In the result, this Interlocutory Application stands allowed and disposed of.

(S. Talapatra)
Judge

(Savitri Ratho)
Judge

MATA No.133 of 2022

Order No.

08.

1. In view of the order passed today in I.A. No.205 of 2022, we take up this appeal for consideration.
2. Heard Mr. J. Sahu, learned counsel appearing for the appellant.
3. We find from the Judgment the matrimonial suit has been allowed on the ground of adultery. The said Judgment has been challenged by the appellant who filed the matrimonial suit being Civil Suit (MAT) No.34/77 of 2012-13. We reproduce the operative part of the Judgment which would suffice our purpose:

“The matrimonial suit is allowed on contest against the respondents. The marriage of the petitioner solemnized on 24.02.1993 with the respondent No.1 is hereby dissolved from the

date of this order i.e.15.01.2022. A decree of divorce be granted accordingly. The respondent No.1 is not entitled to any permanent alimony/ maintenance from the petitioner. However, she is at liberty to realize the arrear amount of interim maintenance, if any, awarded in her favour vide the order dated 01.08.2013.”

That order dated 01.08.2013 was never challenged and it was allowed to operate by forming the liability of payment of the present appellant.

4. Though the permanent alimony under Section 25(1) has been refused by the court, the said Judgment has not been challenged. According to our considered view, arrear on account of the interim maintenance as provided by the Judge, Family Court under Section 24 of the Hindu Marriage Act vide order dated 01.08.2013 is realisable and for that reason we do not find any infirmity in the Judgment as challenged in this appeal.
5. Accordingly, the appeal stands dismissed.
6. Pending interlocutory applications if any, stands disposed of.
7. Registry is directed to prepare the decree accordingly.

(S. Talapatra)
Judge

(Savitri Ratho)
Judge