

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No. 46 of 2021

Debanjali Bidika

.....

Appellant

Mr. D. Sethi, Advocate

-versus-

Umakanta Patika

.....

Respondent

CORAM:

JUSTICE S. TALAPATRA

JUSTICE SAVITRI RATHO

ORDER

18.11.2022

Order No.

03.

1. This matter is taken up through hybrid mode.
2. Heard Mr. D. Sethi, learned counsel appearing for the Appellant.
3. By means of this appeal filed under Section 19(1) of the Family Courts Act, 1984, the judgment dated 03.10.2019 delivered in C.P. No.67 of 2019 by the Judge, Family Court, Rayagada has been challenged on the ground of perverse appreciation of the evidence leading to dismissal of the suit.
4. The Appellant instituted the matrimonial suit being C.P. No.67 of 2019, seeking divorce on the ground of cruelty within the meaning of Section 13(1)(i-a) of Hindu Marriage Act. The Respondent even after having the notice from the Court, did not contest the suit. Consequently, the suit proceeded ex parte vide the order dated 16.07.2019. We may note that the Respondent did not even enter appearance for contesting the appeal. Thus, according to us, the challenge falls within a short compass viz, whether the pleadings are

adequate to constitute cruelty and whether those pleadings have been proved by evidence.

5. Mr. Sethi, learned counsel has provided us the certified copy of the pleading and the deposition of the Appellant as P.W.1. He has categorically stated that no other evidence was adduced. That gets assurance from the observation made by the Judge, Family Court, Rayagada in the judgment dated 03.10.2019. In the pleadings, it has been stated by the Appellant that immediately after the marriage, which was solemnized on 24.11.2012, the Appellant was subjected to persistent physical assault and harassment. According to her, every night the Respondent used to assault her in a drunken state. Be that as it may, in the wedlock, two daughters have been born. The Appellant has stated that she was subjected to the physical and mental torture every now and then and finally she took shelter in the paternal house with her children at Chittiserma under Rayagada P.S. The Appellant also filed one complaint against the Respondent for physically torturing her and thereafter filed the matrimonial suit. She was engaged in the Odisha Police on contractual basis, as lady Constable.

6. On scrutiny of the deposition, we find that the pleaded facts have been proved by the Appellant. As the Respondent did not oppose any part of the pleadings and the pleadings having been proved by the process of the law, we would like to observe that since the Appellant has stated in the trial that:

“I do not want maintenance for myself and for my two children from the husband side. That I always feel fear, in any moment my life will gone, due to cruel action of my husband. So this is intolerable and vindictive attitude of my husband.....”

We consider that the Respondent does not have any intention to keep the marital life alive.

7. As such, in our considered view, the Appellant has made out a case of extreme cruelty for granting her a decree of divorce. Accordingly, the marriage between the parties, which took place on 24.11.2012 is dissolved. Since the Appellant has foregone the claim of maintenance or alimony, we are not passing any order in that regard presently. Consequently, the matrimonial suit is decreed.

8. In the result, the appeal is allowed.

9. Registry is directed to prepare the decree accordingly.

10. It is noteworthy, that reference as made to the deposition has been made from the certified copies.

11. Urgent certified copy of this order be granted as per rules.

(S. Talapatra)
Judge

(Savitri Ratho)
Judge