

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No. 126 of 2016

Dillip Kumar Sadangi ***Appellant***
Mr. D. Mishra, Advocate
-versus-

Sujata Panda ***Respondent***
Mr. S.C. Mishra, Advocate

CORAM:
JUSTICE S. TALAPATRA
JUSTICE M.S. SAHOO

ORDER
17.10.2022

Order No.

12.

1. This matter is taken up through hybrid mode.
2. Heard Mr. D. Mishra, learned counsel appearing for the Appellant and Mr. S.C. Mishra, learned counsel appearing for the Respondent.
3. This is an appeal under Section 19(1) of the Family Court Act, 1984 from the judgment dated 22.09.2016 delivered in C.P. No.36 of 2015 by the Judge, Family Court, Phulbani.
4. The Respondent (the wife) instituted the matrimonial suit being Criminal Proceeding No.36 of 2015 for decree of divorce by dissolution of the marriage, which was solemnized on 06.07.2012 on the ground of extreme cruelty. Along with that prayer, ancillary prayer for return of streedhan under

Section 27 of the Hindu Marriage Act, 1955 was also made in the suit. After recording the evidence the Judge, Family Court, Phulbani clearly held on appreciation that, there is sufficient evidence that Appellant (the husband) had treated the Respondent with cruelty and the Respondent was not expected to live in such matrimonial environment. It is apparent that matrimonial discord was existing, leading to filing of the suit. Even the Respondent filed a criminal complaint against the Appellant and those facts are not disputed. At the time of passing of the decree of divorce, the custody of their minor son has been given to the Respondent. Finally, the Judge, Family Court, Phulbani has declared the marriage dissolved by issuing a decree of divorce, by releasing the parties from their respective matrimonial obligations. Simultaneous to that order, the Appellant has been directed to pay a sum of Rs.3,00,000/- (Rupees Three Lakhs) as permanent alimony to the Respondent within three months from the date of the judgment. Besides that, a direction for payment of the maintenance allowance to the extent of Rs.1500/- (Rupees Fifteen hundred) has been retained from the date of the filing of the suit i.e. 17.08.2015. Even the arrear maintenance had been directed to be paid by the Appellant. Those pecuniary directions were not complied.

5. Mr. D. Mishra, learned counsel has appeared for the Appellant, at the outset quite categorically stated that, the

challenge against the findings relating to dissolution of marriage on the ground of cruelty will not be insisted by the Appellant under the changed circumstances, as according to assessments of the Appellant, the marriage has been shattered beyond repair. Even, he will not insist for the claim of the custody of the son. The challenge, according to Mr. Mishra, learned counsel is now confined to payment of the permanent alimony and the maintenance. According to Mr. Mishra, learned counsel that Respondent is employed in a regular service earning sufficient means for livelihood. But the Appellant, by filing the affidavit in the form of interlocutory application being I.A. No.169 of 2022 has stated that, at the instance of the Lok Adalat that was held on 11.02.2015 a settlement had been struck between the parties in connection with the maintenance proceeding before the Judicial Magistrate First Class. The parties herein had settled their dispute in the Lok Adalat and as thus the case was disposed of. Mr. Mishra, learned counsel has further submitted that, since the Respondent has been working as a teacher and her own resource is sufficient to maintain her child, as the Appellant is an unemployed person, the obligation to pay the maintenance or the permanent alimony as determined by the Family Court be waived.

6. From the other side, Mr. S.C. Mishra, learned counsel appearing for the Respondent has submitted that, in the face of

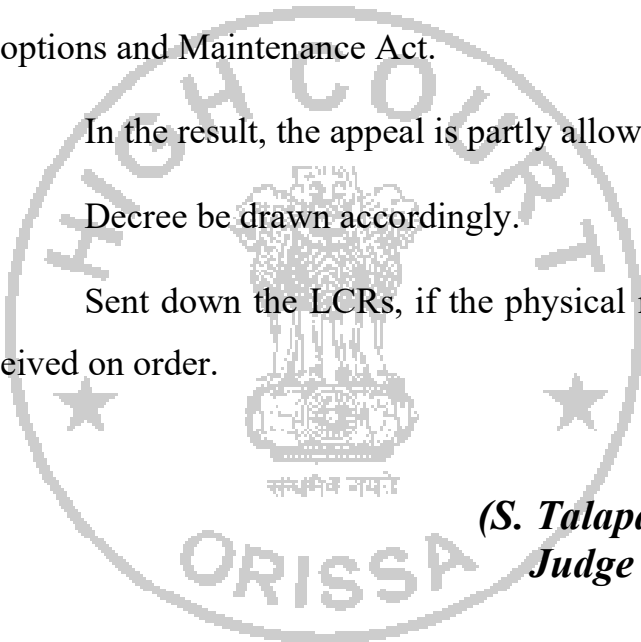
the abovementioned statements made in the I.A. No.169 of 2022, he made endeavours to have instruction from the Respondent, but he could not gather any response from her. As such, he is not in a position to make any submission on the averment in the affidavit. Since the Appellant has stated before us that, so far as the findings relating to the dissolution of marriage and the custody of the child are concerned will not be insisted, we might decide the issues in respect of return of *streedhan*. Since the above mentioned I.A. No.169 of 2022 remained untraversed and uncontroverted, we cannot hold anything contrary to the averments made in that interlocutory application. So far as the employment of the Respondent is concerned, Mr. S.C. Mishra, learned counsel for the Respondent has acceded to that claim that, she is employed and living with her child. It has not been disputed that the Appellant do have a regular employment. But the Appellant is surviving on some casual employment.

7. Having due regard to this aspect of the matter, we are of the view that, this is not a case where in order to ensure the status of livelihood, the Appellant could be directed to pay some maintenance to the Respondent. As such, the issue of proving maintenance, which has been already resolved in the Lok Adalat, as noted above may not be reopened. Further

interference also is not warranted. So far as the return of the *streedhan* is concerned, under Section 27 of the Hindu Marriage Act, 1955, this Court is inclined to believe the statement made by the Appellant that *streedhans* have been returned. But, as the measure of abundant caution, we would observe that, if any *streedhan* is lying in the custody of the Appellant that should be returned within a period of three months from the date of decree. So far as the question of payment of permanent alimony is concerned, we are of the view that the permanent alimony in favour of the Respondent should not be maintained for her financial status. But, at the same time, we cannot be oblivious that, she has been maintaining their son, born in the wedlock. As such, we direct the Appellant to deposit the said amount of Rs.3,00,000/- (Rupees three lakhs) in a term deposit in the name of their son. But the said term deposit shall not be encashed, till the son attains the majority. Such terms deposit shall be made within a period of three months from today. It is made further clear that, the independent right of the child for getting maintenance

from his father (the Appellant) has not been waived even, not by implication. In the appropriate circumstances, the son may approach for further maintenance from the Appellant and on refusal, he may through the close relative or through her mother may approach the Court seeking maintenance under Section 125 of the Cr.P.C. or Section 20 of the Hindu Adoptions and Maintenance Act.

8. In the result, the appeal is partly allowed.
9. Decree be drawn accordingly.
10. Sent down the LCRs, if the physical record has been received on order.



(S. Talapatra)
Judge

(M.S. Sahoo)
Judge