

IN THE HIGH COURT OF ORISSA AT CUTTACK
MATA No.49 of 2021

Monalisha Nayak

.....

Appellant
Mr.P.K.Mishra, Advocate

Vs.

Ramesh Kumar Nayak

.....

Respondent
Mr.A.Tripathy, Advocate

CORAM:

JUSTICE S.TALAPATRA
JUSTICE SAVITRI RATHO

ORDER

02.12.2022

Order No.
08.

1. This matter is taken up through hybrid mode.
2. Heard Mr.P.K.Mishra, learned counsel appearing for the appellant-wife and Mr. A.Tripathy, learned counsel appearing for the respondent-husband.
3. This appeal, by the appellant-wife, arises from the judgment dated 30.09.2019 delivered in Civil Proceeding No.37 of 2019 by the Judge, Family Court, Nayagarh. The said judgment was passed ex parte, in absence of the appellant herein. Even though the appellant did not participate in the proceeding, the judgment has been delivered on merit holding that the appellant has treated the respondent herein with cruelty and also deserted the respondent without any reasonable cause. In the Matrimonial Suit, it has been asserted by the respondent that the appellant was living separately for more than two years and her resistance all conciliatory steps failed. The Judge, Family Court has, after recording evidence, observed that the appellant is guilty of willful negligence, in due discharge of her marital obligation towards her husband (the respondent herein). She did not like to live at her matrimonial home alongwith the respondent at Jagir Khairapati. It has

been held by the Judge, Family Court that the appellant has deliberately neglected the respondent and deserted him for a period of more than two years. According to the Judge, Family Court, there is no chance of re-union. Hence, the marriage between the parties has been declared liable to be dissolved and accordingly it has been dissolved. That finding has been challenged. The appellant has categorically stated that she did not get any opportunity to contest the Matrimonial Suit.

4. Mr. A.Tripathy, learned counsel appearing for the respondent has fairly submitted that the respondent will have no objection, if the said judgment and decree dated 30.09.2019 are set aside for purpose of remanding the Matrimonial Suit to the Judge, Family Court, Nayagarh, upon fixing a time frame for disposal.

5. Accordingly, we set aside the said judgment and decree dated 30.09.2019 and the decree draw there-from on concession, and remand the suit to the Judge, Family Court, Nayagarh for re-commencing the proceeding from the stage of filing of the written statement. The Judge, Family Court, Nayagarh is requested to complete the entire proceeding, as expeditiously as possible having regard to Section 21 B of the Hindu Marriage Act, 1955.

6. Since the parties are present in person before us, we direct them to appear before the Judge, Family Court, Nayagarh on 10th January, 2023. It is made further clear that further notice for appearance of the parties will not be issued by the Judge, Family Court, Nayagarh. We direct the appellant (the opposite party in the Civil Proceeding No.37 of 2019) to file the written statement by that date, i.e., 10th January, 2023. No further accommodation will be made for filing of the written statement, as we have waived the restriction clause for filing of the written statement. It is needless to mention that the Judge, Family

Court, Nayagarh shall take initiative for conciliation of the matrimonial dispute existing between the parties, as they have one small child, born out of their wedlock.

7. In the result, the appeal stands allowed.

8. Registry is directed to draw the decree accordingly and if the L.C.Rs. are still using in the Registry, the same shall be returned to the Judge, Family Court, Nayagarh with a copy of this order.

9. Copy of this order be supplied to the counsel for the parties, free of cost, expeditiously.

(S.Talapatra)
Judge

(Savitri Ratho)
Judge

Bichi

