

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No.50 of 2016

Niruparani Acharya

.....

Appellant

Mr. P.K. Panda, Adv.

-Versus-

Harmohan Panigrahi

.....

Respondent

Mr. J. Samantaray. Adv.

CORAM:

JUSTICE S. TALAPATRA

JUSTICE M.S. SAHOO

ORDER

20.07.2022

Order No.

14.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Mr. P.K. Panda, learned counsel appears for the appellant.
3. Mr. J. Samantaray, learned counsel appears for the respondent.
4. This appeal is directed against the Judgment dated 30.03.2016 delivered in C.P. No.292 of 2013, by the Judge Family Court, Berhampur. Indisputably, no alimony has been provided for the appellant-wife while passing the decree of divorce.
5. It may be noted, at the threshold, that there is no challenge against the decree of divorce.
6. Learned counsel for the appellant has clearly submitted in response to our query that no application under Section 25 (1) of the Hindu Marriage Act, 1955 had been filed by the appellant, seeking alimony or maintenance.

7. Mr. J. Samantaray, learned counsel appearing for the respondent has claimed that the only ground taken in this appeal is that, one memo, filed on the date of argument, was not taken into consideration by the Judge, Family Court. In the said memo, admittedly, the appellant informed the Court that she had resigned from the service.

8. It thus clearly emerges that there was no consideration in respect of granting alimony by the Judge, Family Court as there no prayer for exercising power for granting alimony under Section 25 (1) of the Hindu Marriage Act.

9. Section 25 of the Hindu Marriage Act itself provides that alimony or maintenance can be provided by the Judge who passes the decree of divorce but on application made by the party.

10. For purpose of reference, the relevant part of the Section 25 of the Hindu Marriage Act is reproduced hereunder:

★ Any Court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondents own income and other property, if any, the income and other property of the applicant [the conduct of the parties and other circumstances of the case], it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

11. It is apparent from Section 25 (1) that such order of maintenance or alimony can only be passed. On application, made to the Court for the said purpose either by the wife or the husband, as the case may be. It can be ordered that the respondent shall pay to the applicant for her or his maintenance and support by such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant having due regard to the respondent's own income and other property, if any.

12. Even the conduct of the parties and other circumstances of the case may be examined by the concerned Court, for the purpose of passing such order.

13. Section 25 (1) postulates that such application, as referred before, can be made at the time of passing of the decree or at any time subsequent thereto. As such, we are of the view that appeal is not the appropriate recourse for passing the order under Section 25 (1) of the Hindu Marriage Act.

14. The competent Court has to inquire into the various aspects, viz. income of the parties, standard of life and also the conduct of the parties.

15. As such, the appeal stands dismissed, however, reserving the liberty in favour of the appellant to approach the Family Court under Section 25 (1) of the Hindu Marriage Act for alimony or maintenance, at the option of the appellant.

16. Draw the decree accordingly.

(S. Talapatra)
Judge

(M.S. Sahoo)
Judge



