

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No.141 of 2019

T. Yudhistir Reddy

.....

Appellant

Mr. B.P. Tripathy, Advocate

-Versus-

T. Geetanjali Reddy

.....

Respondent

Mr. B. Sahoo, Advocate

CORAM:

**JUSTICE S. TALAPATRA
JUSTICE SAVITRI RATHO**

ORDER

05.12.2022

I.A. No.212 of 2019

Order Nos.

06.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. D. Mohapatra, learned counsel appearing for the appellant on instruction of Mr. B.P. Tripathy, learned counsel and also heard Mr. B. Sahoo, learned counsel appearing for the respondent.
3. This is an application under Section-5 of the Limitation Act for condoning the delay of 474 days in preferring the appeal against the order dated 23.04.2018 delivered in C.P. No.300 of 2016 by the Judge, Family Court, Berhampur, whereby the wife has been allowed by directing the appellant herein to restitute the conjugal rights and it was further directed that the appellant shall pay a sum of Rs.10,000/-

(Rupees ten thousand) per month as maintenance to the respondent herein.

4. The basic ground taken for challenging this order is available in the judgment and order dated 04.11.2017 delivered in M.C. No.4665 of 2016 by the Court of the 4th Additional Principal Judge, Family Court, Bengaluru.

5. By the said judgment, the marriage between the appellant and the respondent was solemnized on 05.02.2014 at Ganjam has been dissolved and pursuant thereto, decree of divorce has been issued on the same date. The said judgment and decree was passed on 04.11.2017.

6. According to Mr. Mohapatra, learned counsel, the impugned judgment and order in C.P. No.300 of 2016 was passed on 23.04.2018 directing restitution of conjugal rights.

7. There was no challenge against the judgment dated 04.11.2017 by either of the parties for any reason. As such, legally, the marriage between the appellant and the respondent is non-existent. Hence, the order for restitution of conjugal rights cannot be sustained.

8. Having regard to the question of law, which has not been decided by the Judge, Family Court, we take a liberal view to condone the aforesaid delay.

9. Accordingly, the delay stands condoned subject to payment of cost of Rs.10,000/- (Rupees ten thousand) to the respondent. The said cost will be deposited in the Court of the Judge, Family Court, Berhampur, within a period of 15 days from today. The same shall be disbursed to the respondent on her appearance.

10. In the result, this application is allowed and disposed of.

(S. Talapatra)
Judge

(Savitri Ratho)
Judge

MATA No.141 of 2019

- 07.
1. Heard Mr. D. Mohapatra, learned counsel appearing for the appellant on instruction of Mr. B.P. Tripathy, learned counsel and Mr. B. Sahoo, learned counsel appearing for the respondent.
 2. Mr. Mohapatra, learned counsel has submitted that the respondent will not be benefited by any way from the judgment and order dated 23.04.2018 in as much as when the marriage does not exist, the decree of restitution of conjugal rights cannot have any effect.
 3. It is evident from the order dated 04.11.2017 that despite the service of notice, the respondent did not appear before the court at

Bengaluru and the decree of divorce that was passed pursuant to the judgment dated 04.11.2017 was ex parte.

4. Mr. Sahu, learned counsel has submitted that the respondent was never aware of this judgment and order Annexure-1 to the memorandum of appeal. For that reason, she initiated the proceeding for restitution of the conjugal rights and the decree has been issued for that purpose. Mr. Sahu, learned counsel hastened to add that the appellant was duly noticed, he appeared but did not place the judgment dated 04.11.2017.

5. We have given our anxious consideration to the situation, as emerged, which is quite unfortunate. As we perceive, the parties were not diligent in prosecuting the matrimonial suits, both in Bengaluru and in Berhampur.

6. This is a core question in the controversy in as much as whether the Judge, Family Court, Berhampur had the jurisdiction at all to pass the decree of restitution of conjugal right. For that, we cannot make the Judge, Family Court liable in any manner because the appellant did not submit any copy of the judgment and order dated 04.11.2017 before that Court. But since existence of that decree has surfaced now, it is required to be taken judicial notice of and

accordingly we take judicial notice of the judgment and order dated 04.11.2017, Annexure-1 to the memorandum of appeal.

7. Having regard to the consequence that might follow and the multiplicity of the effect that may invite for existence of both that decree, we consider, it would be apposite to interfere with the judgment and order dated 23.04.2018, as delivered in C.P. No.300 of 2016 by the Judge, Family Court, Berhampur.

8. We set-aside the said judgment and decree, but for a limited purpose, as we have reserved our opinion on the issues, as those have been settled by the Judge, Family Court, Berhampur. If the appellant submits the certified copy of the judgment and order dated 04.11.2017, the said judgment and order be admitted in the records of evidence for the purpose of consideration. If the parties intend to introduce additional evidence for taking that judgment and order dated 04.11.2017 on record, they may be allowed opportunities for the same.

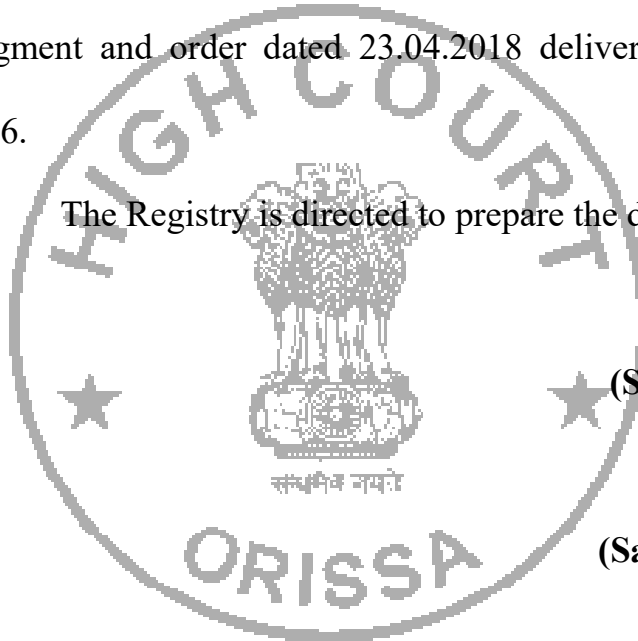
9. Immediately after taking the judgment and order dated 04.11.2017 on record as the admitted document, the Judge, Family Court, for the purpose of recording the evidence, shall frame two additional issues, which are as follows:

- (I) Whether in the proceeding, being M.C. No.4665 of 2016, the respondent was noticed and when the respondent was aware of the said proceeding ?
- (II) Whether any decree of restitution of conjugal rights can be passed having regard to the judgment and decree dated 04.11.2017, as delivered in M.C. No.4665 of 2016 by the 4th Additional Principal Judge, Family Court, Bengaluru ?
10. Since the matter is pending since 2018, we would request the Judge, Family Court, Berhampur to take the proceeding to its logical end, within a period of eight months from the date, when the appellant shall file the said judgment and decree dated 04.11.2017.
11. As a measure of abundant caution, we also permit the respondent to deposit a copy of the said judgment and order dated 04.11.2017, Annexure-1 to the memorandum of appeal.
12. There is no dispute regarding the authenticity of the said judgment and decree. Copy of that judgment and decree dated 04.11.2017 even though a secondary evidence, may be admitted in the evidence by the Judge, Family Court, Berhampur.
13. In the result, the appeal stands partly allowed.

14. The matrimonial suit, being C.P. No.300 of 2016 is remanded to the Court of the Judge, Family Court, Berhampur for completing the trial in terms of the above directions.

15. We make it clear that, if the payment of cost of Rs.10,000/- (Rupees ten thousand) awarded as a condition precedent towards condonation of delay is not deposited within the stipulated time, this order shall stand automatically recalled, causing restoration of the judgment and order dated 23.04.2018 delivered in C.P. No.300 of 2016.

16. The Registry is directed to prepare the decree accordingly.



(S. Talapatra)
Judge

(Savitri Ratho)
Judge

