

IN THE HIGH COURT OF ORISSA AT CUTTACK
MATA No. 189 of 2022

Achanta Swapna Shree

.....

Appellant

Mr. N. Biswal, Advocate

Vs.

D. Sairam Satvik

.....

Respondent

Mr. G.N. Mishra, Advocate

CORAM:

JUSTICE S. TALAPATRA

JUSTICE SAVITRI RATHO

ORDER

04.11.2022

Order No.

02.

1. This matter is taken up through hybrid mode.
2. Heard Mr.N.Biswal, learned counsel appearing for the appellant and Mr. G.N.Mishra, learned counsel appearing for the respondent.
3. We are faced with a strange situation, as the counsel for the parties have admitted that the petition for divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955 being Civil Proceeding No.27 of 2022 is pending for disposal before the Judge, Family Court, Rayagada. By means of this appeal, the judgment dated 27.07.2022 delivered in the Civil Proceeding No.19 of 2021, by the Judge, Family Court, Rayagada, has been challenged. The said proceeding was for annulment of marriage on the ground of *impotency*.
4. In the course submission, Mr. Biswal, learned counsel has alleged that the husband, the respondent herein, is not cooperating in the proceeding and consequently, the proceeding for divorce by mutual consent is getting delayed.

5. Mr. Mishra, learned counsel has, in that context, submitted that there might have been some occasional dislocations for absence of instructions. He has asserted that the respondent (the husband) is equally eager to have the decree of divorce by mutual consent.

6. We have perused the order dated 20.07.2022, Annexure-6 to the memorandum of appeal. We find that the cooling period of six months has been waived by the Judge, Family Court, Rayagada. Therefore, there should not have been any impediment in determining the said civil proceeding.

7. As stated, in this appeal the judgment dated 20.07.2022 delivered in C.P. No. 19 of 2021 by the Judge, Family Court, Rayagada has been called in question. The appellant filed the matrimonial suit being the Civil Proceeding No.19 of 2021 seeking annulment of the marriage under Section 12 (1) (a) of the Hindu Marriage Act, 1955 by a decree of nullity. Having observed the due process and on the appreciation of the evidence as laid, the Judge, Family Court, Rayagada has returned the finding that the petitioner has failed to prove alleged *impotency* of the respondent. Consequently, the suit was dismissed.

8. Mr. Biswal, learned counsel has submitted that appreciation of the evidence was grossly erroneous. But, we are constrained to observe that the appellant cannot be permitted by us to breathe hot and cold at the same time. In one proceeding, she sought annulment of marriage on the ground as noted before and in the other proceeding, she has given consent for the decree of divorce by mutual consent.

9. That apart, we have perused the reasons given by the Judge,

Family Court, Rayagada on appreciation of evidence. We do not find any infirmity in the said findings. For both the reasons, this appeal being devoid of merits, is dismissed.

10. Draw the decree accordingly.

11. Before parting with the record, digressing a little bit from the core objection raised in this appeal, we are inclined to observe that when a petition under Section 13-B of the Hindu Marriage Act, 1955 for decree of divorce by mutual consent is filed, the Court is not required to allow the parties to cross-examine on any pleading. The Court has to ascertain whether the parties do vouch the pleadings towards divorce by mutual consent. If the Judge, Family Court or the other Court of competent jurisdiction is satisfied on the said aspect, the decree of divorce should be issued by mutual consent without any further delay. The parties are given liberty to file an application before the Judge, Family Court, Rayagada for expeditious disposal which, we believe, will be considered in terms of our observation as recorded, above.

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

(S. Talapatra)
Judge

(Savitri Ratho)
Judge

Bichi/Sukanta