

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No. 59 of 2021

Madhusmita Sahoo		Appellant
	Mr. P.K. Mishra, Advocate	
	-versus-	
Dhirendra Thakur		Respondent
		None

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

<u>Order No.</u>	<u>ORDER</u> 08.08.2022
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- 05.** **1.** This matter is taken up through hybrid mode.
- 2.** Heard Mr. P.K. Mishra, learned counsel for the appellant.
- 3.** None appears for the respondent, despite due notice from this court. Even the respondent did not appear to contest the matrimonial suit being C.P. No.307 of 2019, instituted by the appellant U/s.27 of the Special Marriage Act, 1954 seeking dissolution of the marriage that has been subsisting between the parties on the ground of *cruelty* and *desertion*.
- 4.** In the petition, the appellant, wife of the respondent has pleaded quite categorically that on 03.12.2011 she had married the respondent under the Special Marriage Act, 1954, by way of registration U/s.7 of the said Act.

The respondent is totally unemployed, whereas the appellant has been working in a Bank. There are several allegations made in the said petition viz. the respondent was rough and adamant, and used to abuse her in all possible ways. Even she was threatened that if she did not give a sum of Rs. 5 lakhs, she will be subjected to physical torture. When she denied to provide that fund, she was subjected to physical assault. No specific date has been referred in the petition. According to her, for those matrimonial misconducts, their marital relation had completely broken down and every passing day was trial for her. The respondent had behaved in a manner that no civilized person is expected to live with him. It appeared to her that it is dangerous to live with the respondent. In that background, as stated by the appellant, she was persuaded to file petition seeking dissolution of marriage. It was also stated that since 14.07.2012, the appellant and the respondent were living separately without any sort of cohabitation and meeting. After that day i.e. 14.07.2012, the appellant was never in the company of the respondent.

5. As the respondent did not file any written statement, notwithstanding the summons was properly served on him, the entire proceeding went ex-parte. However, in order to prove the allegations, the appellant herein examined herself as P.W.1. There was no challenge against the said averments or the testimony of P.W.1. Despite that, the Judge, Family Court observed that, *“False allegations by one spouse about the other having alleged illicit relations with different persons outside the wedlock also amounts to mental cruelty. False allegations against husband of having illicit relationship or extramarital affairs by wife in her written statements constitute cruelty and on that count, the husband cannot be reasonably asked to live with the wife.”*

6. We have really failed to understand under what context, this observation has been made because on reading of the entire petition, it is not found any such allegation has ever been made by the appellant against her husband. In this regard, the Judge, Family Court has referred to the celebrated decision of the Apex Court in **Samar Ghosh vrs. Jaya Ghosh** reported in

(2007) 4 SCC 511. In the judgment under challenge in this appeal extricating the principles, laid down in the said report, from the context, the Judge, Family Court has observed that even there is no material that the appellant had instituted a matrimonial suit U/s.9 of the Hindu Marriage Act, 1955 for restitution of the conjugal rights. Absence of such action has been adversely used against the appellant. Having referred the evidence on record, the appellant has stated that she lived with the respondent in his house till 14.07.2012 from the date of solemnization of marriage i.e. 13.12.2011. It is strange to notice that even the appellant has adduced her evidence that she left the matrimonial house i.e. on 14.07.2012 being unable to bear violence and mental cruelty inflicted by the respondent. The Judge, Family Court has observed abruptly that, *“So the ground of cruelty as alleged is not established against the respondent within the meaning of Section 27 of the Special Marriage Act, 1954. There is no convincing or credible evidence on record to hold the respondent to be guilty solely of her desertion from his marital society. There is no evidence on record to allow*

the petitioner that had been driven out of her matrimonial home on 14.07.2012 or at any point of time, prior to that, by the respondent or anybody in his behalf.”

7. We are taken aback by the analogy as built by the Judge, Family Court denying to grant divorce. In *Samar Ghosh (supra)*, the Apex Court has quite succinctly stated that, if two persons’ taste are totally different, the personal behaviours are at different poles and they do not find any mental peace in living in the marriage, that by itself constitutes cruelty for the spouses. *Samar Ghosh (supra)* has remarkably made departure from the definition of cruelty so far developed from the days of ***N.G. Dastane (Dr.) vs. S. Dastane*** reported in **(1975) 2 SCC 326**. As the society is progressing and the women are being financially independent, they do not think themselves subservient to their husbands. They are not expected to tolerate marital violence or cruelty. To live with dignity, is essence of human life. No court of law can take position contrary thereto. We find that the Judge, Family Court has travelled much beyond

the evidence and without having any regard to the context that the respondent did not come forward to contest the allegations made in the petition, he returned the impugned findings. In such background, the evidence of the appellant is supposed to be believed, unless it is found absurd. Here, it is not the case. Moreover, making reference to the restitution action, the Judge, Family Court has stretched the evidentiary materials too much. There cannot be any amount of doubt that the Judge, Family Court has departed from the issues, relevant for determination of the said matrimonial suit. While weighing the evidence of the appellant (P.W.1), the Judge, Family Court has committed serious error of law and thus, caused failure of justice, and hence, we are persuaded to reverse the judgment and accordingly, the said judgment and decree dated 27.08.2021, of dismissal of the matrimonial suit being C.P. No.307 of 2019 stand set aside.

8. We are wholly convinced that there is no scope of reconstruction of the marriage. We must observe that

the dragging the wife from the matrimonial home is not essential concomitant as proof of cruelty. If the wife fails to bear the cruel behaviour or the cruelty, when it is to the extent of physical assault, the wife has every right to leave the matrimonial home. Her leaving of the matrimonial home in such circumstances, cannot be used against for denying the decree of divorce. In our estimate, the appellant proved the cruelty and lack of marital compatibility.

9. Having observed thus, the matrimonial suit being C.P. No.307 of 2019 is decreed by dissolving the marriage that was solemnized between the appellant and the respondent. Since the appellant is a working lady and the respondent is unemployed, we do not propose to provide any alimony, even there is no representation for such claim. A copy of the order be placed by the appellant to the Marriage Registrar for recording the incidence of divorce in the concerned register of marriage.

10. In terms of the above, this appeal stands allowed.

Decree be drawn accordingly.

(S. Talapatra)
Judge

(M.S. Sahoo)
Judge

RRJena/GS

