

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No.67 of 2021

Anisha Barik

....

Appellant
Mr. L. Achari, Adv.

-Versus-

Biswajeet Parida

.....

Respondent
Mr. S.K. Baral, Adv.

CORAM:

JUSTICE S. TALAPATRA

JUSTICE SAVITRI RATHO

ORDER

21.12.2022

Order No.

09.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard Mr. L. Achari, learned counsel appearing for the appellant and Mr. S.K. Baral, learned counsel appearing for the respondent.
3. Today, a memorandum of compromise settlement has been submitted in the proceeding. The said memorandum is taken on record. If the memorandum of the settlement is accepted, the appeal shall full dismissal, subject to the terms and conditions as recorded in the said memorandum.
4. Judgment dated 23.09.2021 passed in Civil Proceeding No.17 of 2020 has been challenged by the appellant in this appeal. The prayer of the appellant for granting divorce has been dismissed by the Judge, Family Court, Berhampur, Ganjam by the said Judgment. The

unique feature of this proceeding is that an ex parte Judgment dated 30.04.2021 was passed in Civil Proceeding No.233 of 2018 by the Judge, Family Court, Cuttack by dissolving the marriage between the parties on the grounds as cited in the said matrimonial suit, which was instituted by the respondent in this proceeding. As a matter of fact, the decree of divorce is in force.

5. The said Judgment has not been challenged by the appellant. But, it is an admitted position that the appellant herein by filing an application under Order 9 Rule 13 of the CPC being CMA No.63 of 2021 has urged the Judge, Family Court, Cuttack to restore the Civil Proceeding No.233 of 2018 by setting aside the said ex parte decree. The said application for restoration is still pending in the court of the Judge, Family Court, Cuttack.

6. Amid the proceedings, the aforementioned settlement has been struck on the following terms and conditions:

“i) That all the disputes between the parties have been settled by them out of court on the indulgence of their respective guardians, gentries, relations and their counsels even the petitioner respondent left for a while in order to take the decision of their own and they finally decided to be separated from each by obtaining a Decree of divorce in dissolving the marriage solemnized between them on 23.11.2016.

ii) That as agreed upon parties the respondent shall make it convenient by giving Rs.4,30,000/- (Rupees Four Lakhs Thirty Thousand only) to the appellant in total as permanent alimony which shall be paid to appellant on the day of

acceptance of this compromise petition before this Hon'ble Court in the shape of Demand Draft for the amount of Rs.4,30,000/- i.e. D.D. No.988375 of Rs.200000/- and D.D. No.988870 of Rs.230000/- of State Bank of India, Bhubaneswar Main Branch prepared in the name of appellant i.e. Anisha Barik, that apart one SBI Life Insurance vide Policy No.2D787403806 purchased by the respondent in the name of Appellant Anisha Barik will be benefitted by her after maturity where the surrender value will be over and above 1,70,000/-.

iii) That it is also agreed by the parties that neither the party will insist upon any further allegation nor the appellant will agitate any claim relating to their matrimonial issue at any point of time against the respondent and his family members so far this proceeding is concern and the decision so taken is bound to both the parties.

iv) That it is agreed upon by the parties that the appellant shall take appropriate step to withdraw the cases/proceedings initiated by her against the respondent i.e. C.M.C.(D.V.) Case No.11 of 2022 and ICC Case No.284 of 2021 arising out G.R. Case No.1613 of 2019 (arising out of Berhampur Mahila P.S. Case No.93 of 2019) both the cases now pending before the learned S.D.J.M. Berhampur, Ganjam, CRLA No.15 of 2022 pending in the court of District and Sessions Judge, Berhampur, Ganjam, Cr.P. Case No.178 of 2019 pending in the court of the Judge, Family Court, Berhampur, Ganjam and CMA No.63 of 2021 arises out of C.P. No.233 of 2018 pending in the file of Learned Judge, Family Court, Cuttack and the respondent/Husband will take appropriate

step for withdrawal the ICC Case No.448 of 2018 pending in the file of learned JMFC-I, Cuttack.

v) That neither the parties are influenced for this proceeding nor is an iota of collusion pertaining to this proceeding. The decision so taken is outcome of sweet will of the parties without being influenced by anybody.”

[Extracted from the said Memorandum]

7. It is apparent that the appellant and the respondent hereinafter referred to as the parties, have agreed to maintain the decree of divorce for dissolving the marriage solemnized on 23.11.2016. A sum of Rs.4,30,000/- has been settled as the permanent alimony by the parties. That apart, the benefits of the SBI Life Insurance No. 2D787403806 will be availed by the appellant herein. The documents have been exchanged on execution of a memorandum.

8. It has been agreed, in addition, that the parties will not interfere or intervene in their respective future lives, either by making reference to their matrimonial life or their personal life. They shall keep themselves completely away from their respective lives. It has been agreed further that the pending litigations viz. C.M.C.(D.V.) Case No.11 of 2022 and ICC Case No.284 of 2021 arisen out G.R. Case No.1613 of 2019 [arisen out of Berhampur Mahila P.S. Case No.93 of 2019], now pending in the court of the S.D.J.M. Berhampur, Ganjam, CRLA No.15 of 2022 pending in the court of District and Sessions Judge, Berhampur, Ganjam, Cr.P. Case No.178 of 2019 pending in the court of the Judge, Family Court, Berhampur, Ganjam and CMA No.63 of 2021, arisen out of C.P. No.233 of 2018, pending in the court of the Judge, Family Court, Cuttack shall be brought

forthwith to an end by withdrawal or by taking appropriate step for realising the said term.

9. We had the advantage of interacting with both the parties in the proceeding. The appellant has categorically stated that she does not want to allow the marital tie survive any longer and as such, the settlement, as arrived at, may be accepted by this court. Consequently, the Judgment and Decree dated 30.04.2021 as delivered in Civil Proceeding No.233 of 2018 be maintained.

10. Both the counsel for the parties have submitted one memorandum of acceptance of the Demand Draft for an amount of Rs.4,30,000/- and the policy papers in respect of the SBI Life Insurance, as noted above has been executed by the appellant showing that the appellant has received both the Demand Draft and the policy papers.

11. After we have drawn the notice of the appellant to certain findings returned by the Judgment dated 30.04.2021 the appellant has accepted the terms and conditions consciously and without being influenced. Hence, she has repeatedly asserted for passing of the decree of divorce on compromise. Be as it may, we would observe that those observations as made in the ex parte order, in respect of the appellant should have no consequence, being mitigated by the compromise. Accordingly, the appeal being MATA No.67 of 2021 is dismissed, subject to the conditions as set out in the said memorandum of compromise. The decree of divorce as passed pursuant to the said Judgment dated 30.04.2021 is thus given finality. The marital tie between the parties, therefore, stands dissolved by issue of the decree of divorce dated 30.04.2021.

12. We direct the parties to discharge their respective obligations in terms of the said settlement within a period of 60 days from today.
13. The memorandum of settlement as filed in the form of Interlocutory Application may form part of the decree. Consequently, the appeal is dismissed on compromise.
14. Registry is directed to prepare the decree accordingly.

(S. Talapatra)
Judge

(Savitri Ratho)
Judge

Rati Ranjan

