

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAB) No. 29 of 2016

Sanjukta Sahu

....

Petitioner

-versus-

**Executive Engineer, M.I.
Division & Ors.**

....

Opposite Parties

**CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER
15.12.2022**

Order No

- 06.** 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. H.B. Dash, learned counsel for the Petitioner.
3. This writ petition has been filed challenging the order dtd.25.06.2016 passed by the O.P. No. 3, wherein the prayer of the Petitioner to get family pension has been rejected on the ground that the Petitioner is no more the legal married wife of the deceased Govt. employee.
4. In view of the fact that a decree of divorce was obtained by the deceased employee against the Petitioner as per the decree passed by the learned Judge, Family Court, Berhampur on 24.04.2012 in C.P. No. 217 of 2010, it is contended by Mr. Dash, learned counsel for the Petitioner that challenging the said Judgment and decree passed in C.P. No. 217 of 2010 though the Petitioner preferred MATA No. 43 of 2013 before this Court, but during pendency of the matter since the husband of the Petitioner died, the said MATA

No. 43 of 2013 was disposed of by this Court on dt.10.09.2014 with the following order:-

“This MATA has been filed challenging the order dated 24.4.2012 passed by the learned Judge, Family Court, Berhampur. By the impugned order, the learned Judge, Family Court has passed the following order:-

"The civil proceeding is allowed on contest against the respondent without costs. The divorce petition filed by the petitioner-husband stands accepted. A decree of divorce is hereby passed dissolving the marriage between the parties. The petitioner-husband is directed to pay an amount of Rs.5,00,000/- (Rupees five lakhs) to the respondent-wife as permanent alimony. The respondent-wife will continue to stay in the residential house of the petitioner without prejudice to the rights of others."

Admittedly now the respondent Kali Charan Sahu is dead. In the aforesaid view, the first part of the order is, the decree of divorce which was passed in favour of the husband has reached finality and that prayer has become infructuous because now the decree cannot be set aside because of the demise of the husband. So far as the second part of the order passed by the learned Judge, Family Court regarding grant of Rs.5,00,000/- to the wife is concerned, the said part was passed as only against the husband, no executing court can go beyond the decree and therefore, that prayer has become infructuous. Coming to the third prayer that the appellant-wife will continue to stay in the residential house of the deceased husband, it is stated by the learned counsel for the appellant that she is residing in that house and therefore she could not have any grievance in the aforesaid order.

In the aforesaid facts this MATA has become infructuous for all practical purpose and dismissed as such."

5. This Court after going through the said order, finds that while dismissing the matter this Court has already held the decree of divorce obtained by the husband to have attained finality and it cannot be set aside because of the demise of the husband.

6. In view of the said position, Mr. Dash prays for withdrawal of the writ petition with liberty to move appropriate application in MATA No. 43 of 2013.

7. The writ petition is disposed of as withdrawn with the aforesaid liberty.

(Biraja Prasanna Satapathy)
Judge

Sneha

