

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No.224 of 2022

Benudhar Behera

Appellant
.....
Mr. Kousik Ananda Guru, Advocate

-Versus-

Smt. City Satabdi

Respondent
.....

CORAM:

**JUSTICE S. TALAPATRA
JUSTICE SAVITRI RATHO**

**ORDER
21.12.2022**

Order No.

01.

1. This matter is taken up through Hybrid Mode.
2. This is an appeal under Section-19 (1) of the Family Courts Act, 1984 from the judgment dated 12.10.2022 delivered in Civil Proceeding No.296 of 2021 whereby the prayer of the appellant and the respondent for dissolution of marriage by a decree of divorce by mutual consent under Section-13-B of the Hindu Marriage Act, 1955 has been declined.
3. Mr. Kousik Ananda Guru, learned counsel has appeared for the appellant whereas Mr. B. Jena, learned counsel has appeared for the respondent. We heard them. Both the counsel have submitted that

was a mistake that occurred at the time of drafting of the petition was amended. The petition filed by the parties in the Family Court ought to have been filed under Section-28 of the Special Marriage Act, 1954, as the marriage was solemnized and registered under Sections-12 & 13 of the Special Marriage Act, 1954.

4. Mr. Guru, learned counsel appearing for the appellant has submitted that in para-6 of the judgment reasons are provided why the said matrimonial suit has been dismissed. For the purpose of reference, the passage is reproduced here under:

“6. It is pertinent to mention here that the Special Marriage Act provides a special form of marriage, its registration and divorce. A marriage between any two persons belonging to any religion or creed may be solemnized under this Act. Being a secular Act, it plays a key role in liberating individuals from traditional requirement of marriage. A unique feature of the Special Marriage Act is compulsory registration of marriage under the Act, which protects the interest of the parties and children born in the wedlock. No religious rituals or ceremonies are required for the marriage to be completed under the Special Marriage Act and it is up to the parties to

decide whether they want to perform marriage rituals or not. This being the settle position of law, this Court is of the considered view that no ritual is required in order to validate the marriage solemnized under the provision of Special Marriage Act. So, in the instant case, even if the some rituals were performed after the marriage was registered, the said ritual shall not validate further the marriage solemnized under the Special Marriage Act. Also the rites and custom followed subsequently after the marriage under the Special Marriage Act shall not invalidate the marriage registered under the Special Marriage Act. Even if the parties solemnized their marriage under the Hindu rites and custom after their marriage was registered, such solemnization of marriage has got no effect on the marriage solemnized under the Special Marriage Act and the marriage solemnized under the Special Marriage Act shall subsist. So, when a valid marriage under the Special Marriage Act subsists, any ritual followed thereafter may be for the purpose of religious obligation, but it will not supersede the marriage solemnized under the Special Marriage Act, rather any marriage solemnized under the

custom and rites shall be redundant and non-existent in view of the subsistence of a valid marriage under the Special Marriage Act. So, when the subsequent marriage is found to be non-existent in the eye of law, the question of dissolution of such marriage does not arise. Again coming back to the instant case, the marriage of the parties solemnized before the Special Marriage Officer, Panposh on 18.02.2014 is still subsisting and during subsistence of such marriage, dissolution of the so called subsequent marriage under the Hindu rites and custom is misconceived and not maintainable in the eye of law. Moreover, the Court is not in a position to dissolve the subsequent marriage solemnized on 26.02.2016 when a valid marriage under the Special Marriage Act is still subsisting. So, taking into consideration the aforesaid discussion, this Court is of the view that the rituals performed after the marriage under Special Marriage Act on 18.02.2014 shall not validate the present application and no application under the Hindu Marriage Act is maintainable, especially when the marriage under the Special Marriage Act is subsisting. Consequently,

the present application found not maintainable is liable to be dismissed.”

5. From a bare reading of the said passage, it appears that at the time of filing of the said petition for divorce by mutual consent, the appellant and the respondent claimed that their marriage had been solemnized in terms of the Hindu Marriage Act after the marriage under the Special Marriage Act was registered.

6. The finding of the Judge, Family Court in this regard in our considered opinion does not suffer from any infirmity, in as much as the marriage, which is registered following the provisions of the Special Marriage Act, 1954 is a marriage in full form and valid and thereafter no subsequent marriage can take place either under practice or under any law such as the Hindu Marriage Act.

7. Therefore, the finding that the marriage that was solemnized and registered under the Special Marriage Act, 1954 is subsisting is affirmed by us.

8. As we have noticed that after filing of the matrimonial suit under Section-13-B of the Hindu Marriage Act, 1955, the cooling period of six months had expired and after that the impugned judgment was delivered notwithstanding that the parties are

maintaining their consent for decree of divorce. In such circumstances, the technical objection cannot be allowed to pervade.

9. Hence, we declare the marriage, which was solemnized on 18.02.2014 between the parties is dissolved on mutual consent.

10. We have perused the records, as placed before us in the form of the certified copies, and find that the parties have not reserved any conditions for the said consent, except that they would file a petition in G.R. Case No.1084 of 2016 which is pending in the court of the S.D.J.M., Panposh for bring an end based on the settlement, as noted above.

11. We direct the parties to take necessary steps for withdrawal of the prosecution or to bring an end in terms of the above settlement.

12. As the parties are employed, there is no clause for any alimony or costs of the litigation.

13. We have also examined the statements recorded by the Judge, Family Court, Rourkela, in C.P. No.296 of 2021 of both the appellant and the respondent when they have categorically stated that their marriage has come to a dead end and hence, they want to get relieved of the dead marriage. That is why they have freely extended the consent for divorce.

14. Having appreciated the materials as referred to above as well as the consent, the marriage is dissolved by mutual consent.
15. In the result, the appeal is allowed.
16. The Registry is directed to prepare the decree accordingly.

(S. Talapatra)
Judge

(Savitri Ratho)
Judge

