

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA NO.88 OF 2021

Biswaswari Das

....

Appellant

Mr. D. Mohapatra on behalf of

Mr. B.P.Tripathy, Advocate

-versus-

Chinmoy Behera

....

Respondent

Mr. B.S.Das, Advocate

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

ORDER

14.09.2022

Order No.

7. **1.** This matter is taken up through hybrid mode.
- 2.** Heard Mr. D. Mohapatra, learned counsel appearing on instruction of Mr. B.P. Tripathy, learned counsel appearing for the appellant and also Mr.B.S. Das, learned counsel appearing for the respondent.
- 3.** This is an appeal under Section 19(1) of the Family Courts Act,1984 from the judgment dated 06.11.2021 delivered in C.P.No.430 of 2020 by the Judge, Family Court, Cuttack. It is apparent in the face of the records that after receiving the notice, the appellant did not appear in the proceeding and against her, proceeding was declared ex-parte. In paragraph-3 of the above noted judgment, it has been observed as follows :

“After being noticed the respondent-wife did not appear for which she was precluded vide order dated 27.07.2021 and the evidence was taken up ex-parte.”

- 4.** Finally, on recording the evidence as led by the petitioner, the respondent herein, on the ground of cruelty and on the so called ground of irretrievable

breaking down of the marriage, the matrimonial suit was decreed. Thus, the marriage between the appellant and the respondent, which was solemnized on 22.06.2018 was declared dissolved subject to payment of Rs.2,00,000/- to the appellant, as permanent alimony.

5. Mr. Mohapatra, learned counsel appearing for the appellant has quite robustly submitted that when the appellant received the notice, she had a suckling baby and at that time the wave of Corona Virus was very potent, and hence, she could not venture to attend the proceeding leaving the suckling baby at home. Moreover, the notice was served to her father's native place, where she was not residing at the relevant point of time.

6. Be that as it may, Mr. B.S.Das, learned counsel appearing for the respondent with all fairness has submitted that this is a case that should be remitted back, the proceeding shall recommence from the stage of filing the written statement by the appellant herein who is the opposite party in the Civil Proceeding No.430 of 2020 in the court of the Judge, Family Court, Cuttack.

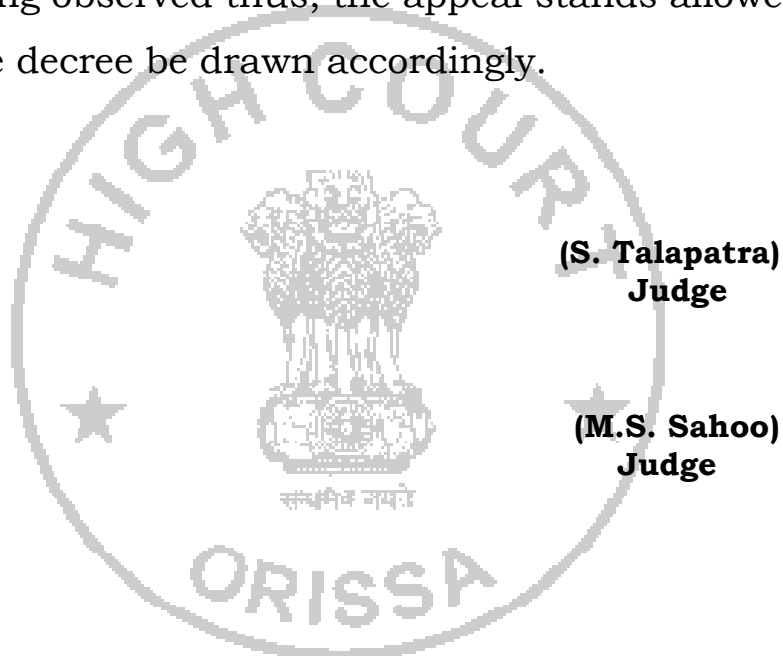
7. Having perused the grounds for challenging the judgment dated 06.11.2021 and the decree dated 24.11.2021, we are satisfied that the appellant was prevented by the circumstances as noted above. As such, we set aside the judgment dated 06.11.2021 and the decree dated 24.11.2021 and remand the Civil

Proceeding No.430 of 2020 back to the Judge, Family Court, Cuttack to commence the proceeding from the stage of filing of the written statement.

8. It is directed that the appellant shall file the written statement in the court of the Judge, Family Court, Cuttack by 14th October,2022 and for this no further notice will be issued. Thereafter, the Judge, Family Court, Cuttack should proceed with the suit with expedition to its logical end.

9. Having observed thus, the appeal stands allowed.

10. The decree be drawn accordingly.



Gs/Radha