



IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No. 168 of 2017

(From the judgment dated 29th November, 2017 of learned Judge, Family Court Dhenkanal passed in C.P. No.25 of 2016)

.... ***Appellant***

-versus-

a ***Respondent***

Advocate(s) appeared in this case:-

For Appellant : Mr. Manoj Kumar Mohanty,
Advocate

For Respondent : Mr. S.K. Mishra, Sr. Advocate
along with Ms. S. Rout, Advocate

**CORAM: JUSTICE B.P. ROUTRAY
JUSTICE CHITTARANJAN DASH**

JUDGMENT
12th March, 2025

By The Bench.

1. Heard Mr. M.K. Mohanty, learned counsel for the Appellant – husband and Mr. S.K. Mishra, learned senior counsel along with Ms. S. Rout, learned counsel for the Respondent – wife.
2. Present appeal is directed against impugned judgment dated 29th November, 2017 of learned Judge, Family Court Dhenkanal passed



in C.P. No.25 of 2016, wherein the prayer for divorce under Section 13(1) of the Hindu Marriage Act at the instance of the husband has been refused.

3. The marriage between the parties took place on 3rd March, 2013. Within the few months of stay of the bride in the matrimonial house the relationship was not at all congenial. There is evidence of allegations and counter allegations including the fact that the marriage never consummated and admittedly the husband and wife stayed separately since 21st December, 2013. A criminal case was also instituted by the wife against the husband and other in-law members.

4. Section 13(1) and 13(1A) of the HM Act read thus:

“13. Divorce.- Any marriage solemnised, whether before or after the commencement of this Act, may, **on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-**

(i) has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or



(ib) **has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or**

(ii) has ceased to be a Hindu by conversion to another religion; or

(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation.- In this clause-

(a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or

(iv)

(v) has been suffering from venereal disease in a communicable form; or

(vi) has renounced the world by entering any religious order; or

(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive;



Explanation.-In this subsection, the expression “desertion” means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

(1A) Either party to a marriage, whether solemnised before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground-

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.”

(emphasis added)

5. The Hon’ble Supreme Court, in the case of ***K. Srinivas Rao vs.***

D.A. Deepa reported in ***(2013) 2 S.C.R. 126***, has observed that-

“26. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the Courts have always taken irretrievable



breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the Court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by *the* Court's decree.

6. Coming back to the case in hand, on being asked, Mr. Mohanty submits that since the conjugal relationship between the parties has been snapped since 2013 and the wife left the company of the husband a decree for desolution of marriage on the ground of desertion ought to have been granted. At this stage, we are conscious of the fact that there are so many unprecedented things happened in the life between the parties, the parties never resumed the Co-habitation after December 2013 and during last 12 years no effort has been made by either party for restitution of conjugal rights. So, in the circumstances keeping in view the fact as noted above, coupled with the allegations leveled against each other embedded with hatredness we find to be a case of complete breakdown of marriage for last one decade and as such we feel it appropriate to grant decree of divorce by dissolving the marriage on the ground of



desertion U/s. 13(1) (ib) of the Hindu Marriage Act. Accordingly, the marriage between the appellant and respondent, solemnized on 3rd March, 2013, is hereby a decree of divorce under Section 13(1)(i)(b) of the HM Act

7. On the question of permanent alimony, Mr Mishra, for the wife Respondent wife submitted for grant of alimony to the tune of Rs. 30,00,000/- (Thirty Lakhs) which was opposed by Mr. Mohanty, the learned counsel for the Appellant/husband. Mr. Mishra though submitted that the husband is having substantial income could not account for a full proof account thereof. However, it is seen from the evidence brought on record that the husband is a business man staying at Dhenkanal town with substantial income. The wife is also a resident of Dhenkanal town, who presently stays with her parents. Considering on the aspect of standard of living, age of the parties and place of their residence, we feel it appropriate to grant permanent alimony to the tune of Rs.18 lakhs to be paid by the husband to the Respondent wife. This amount will strike a balance between proving the Respondent with financial security and ensuring that the Respondent husband is not unduly burdened,



thereby upholding the principle of fairness and equity in matrimonial disputes.

8. Accordingly, the appeal is disposed of granting decree of divorce by dissolution of marriage between Appellant and Respondent with further direction to pay permanent alimony of Rs.18,00,000/- (eighteen lakhs) by the husband depositing the same before learned Judge, Family Court within a period of two months from today, failing which the wife is at liberty to proceed against him in accordance with law.

(B.P. Routray)
Judge

(Chittaranjan Dash)
Judge

M..K. Panda, P.A.