SUPREME COURT OF INDIA

Sanjeeta Das

Vs.

Tapan Kumar Moahnty

C.A.Nos.8196-8197 of 2010

(Aftab Alam and R.M. Lodha JJ.)

22.09.2010

JUDGEMENT

Aftab Alam, J.

1. Leave granted.

2. The order of a division bench of the Orissa High Court that is before us in this appeal, though passed in a judicial proceeding, appears to us to be completely alien to the law. The relevant facts to see the impugned order in perspective may be stated thus.

3. The respondent and the appellant were married in accordance with the Hindu religious rites. About three years after the marriage, he filed a petition (Civil Proceeding No.136 of 1997) before the Family Court, Rourkela for dissolution of his marriage with the appellant on grounds of cruelty and desertion [clauses (ia) and (ib) of section 13(1) of the Hindu Marriage Act, 1955]. The appellant strongly resisted the grounds taken by the respondent for dissolution of their marriage and took the plea that in reality she had been deserted and subjected to cruelty by the respondent. For the purpose of the present appeal, there is no need for us to go into the details of the allegations made by the respondent in his petition or the counter-allegations made against him in the written statement filed by the appellant. Suffice it to note that on the basis of the evidences adduced before it, the Family Court in its judgment dated October 29, 2005 arrived at findings against the respondent on both the issues of desertion and cruelty. Invoking, however, the provision of section 23A of the Act, it directed the appellant to resume cohabitation with her husband, the respondent, within 3 months from the date of the judgment. The operative order of the Family Court is as follows:

> “In the ultimate analysis, while rejecting the prayer of the petitioner seeking for grant of dissolution of his marriage with the respondent by a decree of divorce, I pass a decree of restitution of the conjugal life of the parties. Accordingly, the respondent-wife is directed to restitute her conjugal life with the petitioner-husband within 3 months, hence on the event of the respondent coming to the fold of the petitioner to

restitute her conjugal life with the latter, he shall co-operate with the former and that consequent upon success of the restitution of conjugal life between the parties, the impact/gravity of the criminal proceeding u/s. 498A IPC started against the petitioner and his family members at the instance of the respondent shall be loosen"

4. Against the judgment and order passed by the Family Court, the respondent preferred appeal (MATA No.59 of 2005) before the Calcutta High Court. The appeal was disposed of by a division bench of the High Court by order dated September 2, 2009. From that order it appears that the respondent filed an affidavit before the court declaring his willingness to pay a sum of Rs.10,00,000.00 (rupees ten lakhs only) as life term maintenance of the appellant and for the expenses of marriage of their daughter Kumari Ayushi Mohanty (Richi), in consideration of the dissolution of his marriage with the appellant by a decree of divorce and compounding of a criminal case instituted against him by the appellant. The respondent further stated in the affidavit that he would pay the sum of Rs.5,00,000.00 (rupees five lakhs only) within 4 months from the date of passing of the decree of divorce and the balance amount of Rs.5,00,000.00 (rupees five lakhs only) in 4 equal installments spread over a period of 2 years from the date of the passing of the decree of divorce. The High Court in its order dated September 2, 2009 simply paraphrased the statements made in the affidavit filed by the respondent and made it the order of the court. The order dated September 2, 2009 was later modified by order dated November 20, 2009 to the further advantage of the respondent. It was clarified that the payment of Rs.10,00,000.00 (rupees ten lakhs only) was not only for the lifetime maintenance of the appellant but also for the maintenance of the daughter, Kumari Ayushi Mohanty (Richi) till she got married besides the expenses that might be incurred for her marriage.

5. These two orders passed by the High Court, by which it purported to grant a decree of divorce for dissolution of the respondent's marriage with the appellant are now before us in appeal and plainly speaking we are unable to put any meaning to the order of the High Court. The marriage between the respondent and the appellant was admittedly solemnized in accordance with the Hindu religious rites. A Hindu marriage can be dissolved only on any of the grounds plainly and clearly enumerated under section 13 of the Hindu Marriage Act. The law does not permit the purchase of a decree of divorce for consideration, with or without the consent of the other side.

6. Leaned counsel appearing for the respondent urged us not to interfere in the matter submitting that the respondent and the appellant had lived together barely for four months. He stated that the marriage had taken place on April 29, 1994 and from August 24, 1994 they are living separately. He also tried to argue that the order of the High Court was passed with the consent of the parties and for that reason also this Court should not interfere in the matter. We are not prepared to accept the submission for a moment.

> "First, there is nothing to indicate that the order was passed with the consent of the appellant. All that is said in the order is as under:

> "On consideration of such affidavit and the submission of the learned counsel appearing for the parties, we dispose both these appeals with the following directions" (Emphasis added)

7. The affidavit referred to in the order is the one filed by the respondent and consideration of submission of counsel for the parties does not indicate that the appellant had given her consent for dissolution of her marriage with the respondent on payment of Rs.10,00,000.00 (rupees ten lakhs only).

> "Secondly, and more importantly, the consent of the parties is of no relevance in the matter. No court can assume jurisdiction to dissolve a Hindu marriage simply on the basis of the consent of the parties de hors the grounds enumerated under section 13 of the Act, unless of course the consenting parties proceed under section 13B of the Act."

8. In the light of the discussions made above, we find the order of the High Court completely unsustainable. It is set aside and the appeal against the judgment and order passed by the Family Court is restored to its file. The High Court must now hear and dispose of the appeal along with the connected appeal afresh, in accordance with law. Since the matter is somewhat old, the High Court may give the appeals some priority and dispose them of at an early date.

9. In the result, the appeals are allowed with costs, quantified at Rs.15,000.00 (rupees fifteen thousand only).