ORISSA HIGH COURT: CUTTACK

F.A.O. NO.17 OF 2002

From the judgment and decree dated 24.11.2001 and 10.12.2001, respectively, passed by Sri G.C. Patnaik, Civil Judge (Senior Division), Berhampur in O.S. No.49 of 1999.

Sri Chandra Behera ..... Appellant

V e r s u s

Smt. Sushama Sahu ... ... Respondent

For Appellant : M/s. G.K. Mishra, G.N. Mishra, S.P. Mohanty, S.C. Sahoo & R.K. Sahoo

For Respondent : M/s. R.K. Nanda & Minati Dash

P R E S E N T :

THE HONOURABLE MR. JUSTICE RAGHUBIR DASH

Date of hearing : 05.05.2014 Date of judgment : 16.05.2014

R. DASH, J. This appeal is against the judgment and decree dated 24.11.2001 and 10.12.2001, respectively, passed by the learned Civil Judge (Senior Division), Berhampur in O.S. No.49 of 1999 decreeing the suit for permanent alimony.

2. The suit for permanent alimony under section 25 of the Hindu Marriage Act, 1956 (for short, the Act) was filed by the wife against her husband after the husband's suit for divorce (O.S. No.9 of 1994 in the court of learned Sub-Ordinate Judge, Berhampur) was decreed ex parte vide judgment dated 16.4.1996. In the application

under Section 25 of the Act, she claimed that with her limited source of income she was not able to give proper education to their son and perform the marriage of their daughter. Claiming that the appellant-defendant was getting monthly salary of Rs.7,000/-, besides pension at the rate of Rs.2,000/- per month and annual income of Rs.1,00,000/- from his landed properties she claimed permanent alimony in the sum of Rs.1,00,000/-, besides Rs.2,00,000/- towards the education and marriage expenses of the daughter and Rs.1,00,000/- towards the education expenses of the son. She also prayed for litigation expenses of Rs.2,000/-.

3. Defending the claims made by the plaintiff, the defendant took the stand that he was not bound to give any amount for the maintenance of the plaintiff as well as their son and daughter. Regarding his income the defendant admitted to the extent that he was getting Rs.1,727/- per month towards pension as an Ex-army person and salary of Rs.4,177/- per month as a Male Nurse employed in M.K.C.G. Medical College and Hospital, Berhampur. It is also contended that at the relevant time the plaintiff was working as a Teacher getting monthly salary of Rs.5,680/-, that the daughter was already gainfully employed in a Nursery School at Kuanarmunda, Rourkela, in the district of Sundargarh and that the son was already in business dealing with Iron and Cement also at Kuanarmunda, Rourkela. It was also contended that both the son and daughter had

already become major and, with their own income, they were not dependant on anybody.

4. Learned lower court while allowing the application has awarded Rs.50,000/- as permanent alimony, Rs.30,000/- for the education of the son and Rs.1,00,000/- for the marriage of the daughter.

5. The impugned order has been challenged on the grounds that when the learned lower court recorded his own finding that the daughter was married to a Christian boy and the son had attained majority no amount should have been awarded in their favour and that the expenses for children's education as well as marriage being outside the scope of Section 25 of the Act, the learned trial court ought to have framed an issue on the maintainability of the suit and answered the issue.

In course of argument, it is also submitted that since the wife was in service and had regular monthly income, the learned lower court should not have awarded permanent alimony in her favour.

6. At the time of hearing in the appeal, none appeared on behalf of the respondent.

7. Learned court below has taken into consideration of the fact that the children pursued their studies without any money given by the father for their maintenance since 1993 when the husband

and wife separated. The fact that no part of the expenditure incurred in the marriage of the daughter was borne by the father was also taken note of. Learned lower court also observed that though the wife is in service and an earning member but as per Section 25 of the Hindu Marriage Act, the husband is liable to give permanent alimony to his wife. At the same time, it has also taken into consideration the monthly salary of the wife and the fact that the daughter is already married and the son has become major.

8. On behalf of the appellant it is argued that since the income of the wife was almost equal to that of the husband during the relevant period, the wife is not entitled to any amount towards her maintenance. It is also submitted that award of maintenance to the wife under Section 25 of the Act is not compulsory. The court may, having regard to different factors, pass order for maintenance. In this regard, it may be stated that the wife was a teacher in a Government Primary School and her gross monthly salary at the time she adduced evidence was Rs.5,680/-. On the other hand, the husband as a Male Nurse was getting monthly salary of Rs.4,177/-, besides monthly pension of Rs.1,727/- as an ex-service man. Thus, it is found that both the spouses were earning members and their monthly income was almost equal. Both are Government employees. So, it is to be presumed that they would get pension after their retirement. There is no evidence showing that the husband had any other source of

income. Both of them were staying in Berhampur. Under such circumstances, the husband should not have been asked to pay any amount for her maintenance and support.

9. Admittedly, after the separation of the spouses in the year 1993, the husband did not meet any of the expenses of their children. It is admitted that the son was born on 7.5.1977. So, he became major in the year 1995. But it is shown by the respondent-wife that the son was reading in Vedvyas Mahavidyalaya, Vedvyas, Rourkela during the period 1994-1995 to 1998-1999 and completed +3 Science course in that College. It is also proved that after the College education the son completed Diploma in Computer Application and Data Processing by November, 1999. The learned court below has rightly observed that it is the moral obligation and responsibility on the part of the parents to educate their children to make them self dependant. If both the parents are earning members then both should share the expenses. Since the father has not spent any amount for the College education and post-College course of the son it is to be presumed that the mother after her separation from her husband used to meet the educational expenses of the son. Learned lower court has passed order directing the appellant to support the Respondent to the extent of Rs.30,000/- on that count which does not appear to be excessive.

10. As regards the marriage expenses of the daughter it is claimed by the respondent that she had spent Rs.3,00,000/- in the marriage of the daughter. But the learned trial court has rightly held that there is no reliable evidence to support that claim. But it is a fact that the daughter was given in marriage in the year 2000 while the mother was staying away from the father. As already stated the father has not spent any amount on the daughter's marriage. Therefore, under ordinary circumstances the father should have borne at least 50% of the expenditure incurred by the mother on the marriage of the daughter. But, in this case it has to be taken into consideration that the appellant is a Hindu whereas the respondent is a Christian. However, the ex parte decree for divorce was passed under Section 13 of the Hindu Marriage Act and the said decree has become final. The appellant claims and it is admitted by the respondent that the latter filed the application for maintenance only when her husband insisted that their daughter should be given in marriage with the husband's sister's son. It is also admitted by the respondent-wife that she gave her daughter in marriage with a boy belonging to Christian community. It is the case of the appellant that the daughter's marriage in Christian community was arranged against his will. It is also admitted by the respondent-wife in her deposition that about 4 to 5 years prior to her marriage the daughter was residing with her maternal uncle's family at Rourkela and that her maternal uncle and

aunt are Christians. It is also admitted that the daughter's maternal uncle and aunt arranged the bridegroom. Under such circumstances, the father cannot be compelled to bear a part of the expenses incurred for the daughter's marriage.

11. In the result, the appeal is allowed in part. The order directing payment of a sum of Rs.30,000/- to the respondent to support her in the matter of educational expenses of the son is confirmed but the order directing payment of permanent alimony of Rs.50,000/- to the plaintiff-respondent and Rs.1,00,000/- towards marriage expenses of the daughter is set aside. The appellant shall also be liable to pay interest at the rate of 6% per annum on the amount of Rs.30,000/- from the date of the suit till the date of payment.

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R. Dash, J.

Orissa High Court, Cuttack
The 16th May, 2014/A.K.Kar, Secretary