

SANJEETA DAS

v.

TAPAN KUMAR MOHANTY

(Civil Appeal Nos.8196-8197 of 2010)

SEPTEMBER 22, 2010

[AFTAB ALAM AND R.M. LODHA, JJ.]

Hindu Marriage Act, 1955 – ss.13 and 13B – Dissolution of marriage – Consent of parties – Relevance of – Husband seeking divorce – Family Court directed wife to resume cohabitation with the husband – Husband filed appeal; and in the appeal filed affidavit declaring his willingness to pay specified sum in consideration for grant of divorce – High Court paraphrased the statement made in the affidavit and made it the order of the court while decreeing divorce – Decree challenged by wife – Husband contended that the divorce decree could not be set aside since it was passed with the consent of the parties – Held: A Hindu marriage can be dissolved only on any of the grounds plainly and clearly enumerated u/s.13 – The law does not permit the purchase of a decree of divorce for consideration, with or without the consent of the other side – 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 u/s.13, unless the consenting parties proceed u/s.13B – On facts, in any event, there is nothing to indicate that the divorce decree was passed with the consent of the parties – Order of High Court accordingly set aside – High Court directed to hear and dispose of the matter afresh.

The respondent-husband filed a petition before the Family Court under Sections 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955, for dissolution of his marriage on the grounds of cruelty and desertion. The Family Court directed the appellant-wife to resume cohabitation

A with the respondent.

B Aggrieved, the respondent filed appeal before the High Court. In the appeal, he filed an affidavit declaring his willingness to pay a sum of Rupees Ten lakhs as life term maintenance of the appellant and for the expenses of marriage of their daughter, 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.

C The High Court paraphrased the statements made in the affidavit filed by the respondent and made it the order of the court, and granted a decree of divorce for dissolution of the respondent's marriage.

D The question arising for consideration in the instant appeal was: whether the impugned order of the High Court was passed with the consent of the parties and for that reason it does not warrant any interference by the Supreme Court.

E Allowing the appeals, the Court

F HELD:1. A Hindu marriage can be dissolved only on any of the grounds plainly and clearly enumerated under Section 13 of the Hindu Marriage Act, 1955. The law does not permit purchase of a decree of divorce for consideration, with or without the consent of the other side. [Para 5] [1037-1038-G-H]

G 2. 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 the consenting parties proceed under Section 13B of the Act. In any event, on facts, there is nothing to indicate that the impugned order was passed by the High Court with the consent of the

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appellant. The affidavit referred to in the order of the High Court 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). The consent of the parties, therefore, is of no relevance in the matter. [Paras 6, 7] [1038-B-C; E-F]

3. The order of the High Court is 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 is directed to hear and dispose of the appeal along with the connected appeal afresh, in accordance with law. [Para 8] [1038-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8196-8197 of 2010.

From the Judgment & Order dated 02.09.2009 and in MATA No. 59 of 2005 and dated 20.11.2009 in Misc. Case No. 97 of 2009 in MATA No. 59 of 2005 of the High Court of Orissa at Cuttack.

Manoj Kumat Das (for Sibor Sankar Mishra) for the appellant.

D.D. Singh, S.C. Paul (for Satyendra Kumar) for the Respondent.

The Judgment of the Court was delivered by

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

A 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
B 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
C 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.
D 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:

E "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 reconstitute
her conjugal life with the petitioner-husband within 3
F months, hence on the event of the respondent coming to
the fold of the petitioner to reconstitute 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
G 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)
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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

A consideration, with or without the consent of the other side.

B 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:

C "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)

E 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.

G 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

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somewhat old, the High Court may give the appeals some A
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).

B.B.B

Appeals allowed. B