

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2024
(@SLP(C) No(s). 6452/2018)

BENUDHAR NAIK ... APPELLANT(S)

Versus

PRABASINI @ TUNI NAIK ... RESPONDENT(S)

O R D E R

1. Leave granted.
2. The present appeal arises out of the impugned order dated 04.08.2017 passed by the Orissa High Court in R.S.A. No. 9 of 2016, whereby the Court dismissed the appellant - husband's second appeal and upheld the order of the trial court as well as the first appellate court dismissing the appellant's petition seeking dissolution of marriage on grounds of cruelty and desertion by the respondent - wife.
3. The factual background of the present case is that the marriage between the parties was solemnized on 26.05.1996 as per Hindu rites and rituals. After

the marriage the parties were residing together in the appellant - husband's house. Appellant - husband was working as a Mazdoor in Mahanadi Coalfields Ltd. Subsequently the respondent - wife conceived but because of her ill-health the child passed away within a few hours of the birth. The respondent - wife's health continued to deteriorate due to regular gynecological problems. In the year 2006 it was diagnosed that the respondent - wife had lost her capacity to bear a child. Thereafter the differences of opinion arose between the parties and the respondent - wife allegedly refused to have conjugal relationship with the appellant - husband and left her matrimonial house on 02.11.2008.

4. The appellant - husband approached the family court under section 10 of the Hindu Marriage Act, 1955 seeking a decree of judicial separation. The respondent - wife contested the petition alleging that the appellant - husband was having an illicit relationship. This case was dismissed for default on 06.01.2010. She also lodged a criminal case for

offences under section 498A, Indian Penal Code, 1860 read with section 3 and 4, Dowry Prohibition Act, 1961 implicating the appellant - husband, his mother, his brothers and their wives.

5. A petition seeking dissolution of marriage on grounds of cruelty and desertion was filed by the appellant - husband under section 13 of HMA. It was alleged by him that the respondent - wife had misbehaved with the appellant - husband and treated him with cruelty. It is stated that due to her ill-health and resultant irritation, the respondent - wife would create disturbance in the house, behave rudely with the family, ill-treat the appellant - husband despite him taking care of her and taking loans to provide her with the best treatment. That, during the continuance of the petition for judicial separation the respondent - wife had initiated frivolous criminal proceedings by making false and defamatory allegations of cruelty and dowry demand against the husband as well as his entire family. It is also stated that the respondent - wife has defamed the appellant -

husband by making untrue and defamatory allegations of adultery against him. She has also deserted him by depriving him of the matrimonial relationship and withdrawing herself from the married life and staying separately at her father's house, without any reasonable excuse.

6. The respondent - wife denied all the assertions stated above in her written statement and even denied that the statements made with respect to him taking loans for her treatment and that she had misbehaved with him or the family due to her ill-health. She stated that the family and the husband regularly ill-treated her and thereby had been charge sheeted in the criminal case initiated by her. She also asserted that the appellant - husband was having illicit relationships with one Ranju Naik and with the aim of marrying her and bringing her home he had been ill-treating the respondent - wife. She had been compelled to leave the matrimonial house by the husband and his family owing to her inability to bear a child, and thereby she started residing with her father. Once

the respondent - wife had left the house of the appellant - husband, he married the said Ranju Naik on 02.04.2009 and has been leading a marital life with her without the dissolution of the marriage between the parties. And it is to escape from the charge of offence of bigamy, the appellant - husband made these false claims to seek a decree of divorce.

7. The Civil Judge (Sr. Division), Talcher, District - Angul, vide judgment dated 25.02.2015 dismissed the petition for dissolution of marriage and refused to grant the decree of divorce to the appellant - husband holding that there was no evidence on record to hold that the respondent - wife had treated him with cruelty and had deserted him for a continuous period of not less than two years immediately preceding the petition.

8. Aggrieved, the appellant - husband preferred a first appeal before the Additional District Judge, Talcher, District - Angul on the ground that the trial court had failed to properly appreciate the

evidence on record. The first appellate court vide judgment dated 30.11.2015 dismissed the first appeal and upheld the judgment of the trial court finding no reason to differ from it.

9. The appellant - husband approached the High Court through a Regular Second Appeal challenging the findings of the courts below. The High Court in the impugned judgment dismissed the second appeal and held that the courts below have made categorical findings of fact and discarded the evidence tendered by the appellant - husband upon careful consideration.

10. The appellant - husband has challenged the order of the High Court in the present appeal on the grounds of cruelty and that the relationship of the parties has deteriorated beyond salvation and for all practical purposes, and there is no scope of reconciliation as the marriage now only exists for namesake.

11. We have heard the counsels for the respective parties at length and perused the material on

record.

12. At the outset, it is relevant to note that the parties have been living separately for almost sixteen years now and the same has not been disputed by either of the parties. It also appears from the record that the parties have never made any attempts for reconciliation and have been regularly making severe allegations against each other. While the appellant - husband has alleged misbehavior, ill-treatment, desertion, and false criminal complaint resulting in mental cruelty, the respondent - wife has alleged adultery on part of the husband and cruelty at the hands of the family in order to drive her out of the matrimonial home. The prolonged separation and the severity of the allegations are evidence of the fact that the marriage between the parties has completely broken down. As held in the case of *Shilpa Sailesh v. Varun Sreenivasan*¹, this Court has the discretionary power under Article 142(1) of the Constitution of India to dissolve a

1 (2022) 15 SCC 754

marriage on the ground of irretrievable breakdown of marriage while factually analysing the same and exercising the discretion cautiously. Since in the present case, the parties have not cohabited as husband and wife in sixteen years and have been continuously making grave allegations against each other, there is no purpose for the parties to continue the marriage as it appears to be broken down beyond repair. We are thus inclined to dissolve the marriage exercising powers under Article 142 of the Constitution of India.

13. The respondent - wife is an unemployed woman and thus cannot be left without any financial support and security after the dissolution of the marriage. As laid down by this Court in the case of *Rajnesh v. Neha and Another*², the purpose of permanent alimony in divorce cases is to prevent the dependent spouse from being reduced to destitution and vagrancy due to the failure of marriage. The Court has further laid down an inclusive list of factors that may be considered

² (2021) 2 SCC 324

for calculating the amount of permanent alimony such as income and properties of the parties; their status, social and financial; their personal needs; capacity and duty to maintain others dependent on them; their individual personal expenses; wife's comfort and the standard of life she was used to during the subsistence of the marriage, among others.

14. The parties submitted their affidavits of assets on the orders of this Court. It appears from the material on record that the appellant - husband is working as Blasting Crewman with the Mahanadi Coalfields Ltd. and drawing a net salary of around Rs.88,000/- per month as per his salary slip from July 2024. He also has certain undivided share in the family property of his father. On the other hand, the respondent - wife has no income and no immovable or movable property in her name. Keeping in view the totality of the circumstances, the social and financial status of the parties, their current employments and future prospects, obligations, and expenses, a one-time settlement

amount of Rs.25 lakhs appears to be a balanced and fair maintenance amount. Thus, we fix the said amount as permanent alimony to be paid by the appellant - husband to the respondent - wife.

15. Under the facts and circumstances of the case, the appeal is allowed as under.

16. Considering all the facts and circumstances of the case and analysing the same in light of the considerations stated in *Shilpa Sailesh (Supra)*, the marriage between the appellant - husband and the respondent - wife is ordered to be dissolved in exercise of this Court's power under Article 142 of the Constitution of India.

17. Further, in view of the facts and circumstances, as directed above, permanent alimony of Rs. 25 lakhs be paid by the appellant to the respondent as follows:

1. An amount of Rs.5 lakhs be paid within 75 days from today, and
2. Four monthly instalments of Rs. 5 lakhs each be paid thereafter.

18. Pending application(s), if any, shall stand disposed of.

..... .J.
[VIKRAM NATH]

..... .J.
[PRASANNA B. VARALE]

NEW DELHI;
SEPTEMBER 02, 2024.

ITEM NO.41

COURT NO.7

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 6452/2018
(Arising out of impugned final judgment and order dated 04-08-2017
in RSA No. 9/2016 passed by the High Court Of Orissa At Cuttack)

BENUDHAR NAIK

Petitioner(s)

VERSUS

PRABASINI @ TUNI NAIK

Respondent(s)

(MEDIATION REPORT RECEIVED...)

Date : 02-09-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE VIKRAM NATH

HON'BLE MR. JUSTICE PRASANNA BHALACHANDRA VARALE

For Petitioner(s) Mrs. Prabhati Nayak, Adv.
Mr. Umakant Misra, Adv.
Mr. Debabrata Dash, Adv.
Ms. Apoorva Sharma, Adv.
Mr. Niranjana Sahu, AOR

For Respondent(s) Mr. Md. Shahid Anwar, AOR
Mr. Mohd Shahzeb Khan, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed
order.

Pending application(s), if any, shall stand
disposed of.

(SONIA BHASIN)
COURT MASTER (SH)

(RANJANA SHAILEY)
COURT MASTER (NSH)

[Signed order is placed on the file]