



IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No.253 of 2024

Artatrana Sahoo

....

Appellant(s)

Represented by Adv.–
Ms. Namita Pattnaik, Advocate

-Versus-

Sabita Sahoo

....

Respondent(s)

Represented by Adv.
Mr. Narayan Prasad Parija, Advocate

CORAM:

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

AND

HON'BLE MR. JUSTICE SIBO SANKAR MISHRA

Order No.

ORDER
25.02.2026

04.

1. Heard Ms. Pattnaik, learned counsel for the appellant-husband and Mr. Parija, learned counsel for the respondent-wife.

2. This Appeal is arising out of the civil proceeding initiated by the appellant-husband against the respondent-wife under Section 13(1) of the Hindu Marriage Act, 1955 being C.P. No.205 of 1999. After issuance of notice, the respondent-wife appeared and sought time for filing written statement, however failed to file the written statement. Therefore, on 30.06.2000, an ex-parte decree of divorce was passed against the respondent-wife by the learned Judge, Family Court, Cuttack. Thereafter, the respondent-wife filed an application for setting aside the ex-parte decree, which was favoured by the learned Judge, Family Court, Cuttack. Subsequently, on 18.11.2003, the respondent-wife filed the written statement and the civil proceeding started afresh. The respondent



filed interim maintenance application in the said civil proceeding, which was allowed by the learned Family Judge, Cuttack vide order dated 29.04.2005. When the matter stood thus, the civil proceeding suffered a dismissal for non-prosecution, for which, the appellant moved Misc. Case No.158 of 2006, which was turned down by the learned Judge, Family Court vide order dated 05.07.2007 on the ground that the appellant failed in making good the arrear maintenance to the respondent. Subsequently, the appellant filed another Misc. Case No.142 of 2007 under Order 9 Rule 9 C.P.C. for restoration of the civil proceeding, which was allowed by the learned Judge, Family Court, Cuttack, subject to payment of the entire arrear maintenance and cost of Rs.2,000/-. Although partly the aforementioned conditional order was complied by the appellant, but due to prevailing financial distress, he moved another application seeking modification of the interim maintenance order and the said application was registered as Misc. Case No.257 of 2008. However, due to absence of the learned counsel for the appellant, the Misc. Case No.257 of 2008 in C.P. No.205 of 1999 was dismissed for want of non-compliance of the conditional order as mentioned above.

3. For the purpose of the restoration of the civil proceeding, the appellant filed Misc. Case No.9 of 2012 under Order 9 Rule 9 C.P.C. before the learned Judge, Family Court, Cuttack. It was contended by the appellant that due to physical and mental ailments of the appellant, which resulted in 50% loss of the eye sight and chronic retinal atrophy and post eales retinopathy, he could not attend to the proceeding, which led to the dismissal of civil proceeding vide order dated 16.03.2010.



4. When the matter stood thus, the appellant also filed transfer petition being TRP(C) No.184 of 2016 before this Court seeking transfer of the civil proceeding, which was allowed on 16.03.2017. Pursuant to the transfer of the proceeding, both the parties appeared before the learned Family Court, wherein the application for restoration was pending. The restoration application after transfer was renumbered as I.A. No.7 of 2017. To the misfortune of the appellant and due to physical ailments, the civil proceeding was again dismissed for default on 16.10.2019. The appellant immediately after coming to know regarding the dismissal of civil proceeding moved an application being CMA No.1 of 2020 under Order 9 Rule 9 C.P.C. read with Section 151 C.P.C. seeking restoration of CMA No.7 of 2017 and the C.P. as well. Since the said application was suffering delay of seventy-eight days, the application for condonation of delay was also filed. The learned Judge, Family Court, Cuttack turned down the said application vide order dated 23.07.2022 declined to condone the delay.

5. Being aggrieved by the order dated 23.07.2022 passed by the learned Judge, Family Court, Cuttack in CMA No.1 of 2020, the appellant has approached this Court by filing the present MATA. The appeal was also suffering a delay of 655 days. However, the coordinate Bench of this Court vide order dated 02.12.2024 condoned the delay of 655 days in preferring the Matrimonial Appeal.

6. Learned counsel appearing for the appellant submits that in the application for condonation of delay moved by the appellant before the learned Family Judge, he has succinctly described the



physical impairment he has been suffering. He is permanently disabled and because of his vision problem and surgery undergone for the said propose, he could not diligently prosecute the pending matter before the learned Family Judge, which is the reason for dismissal of the same. While seeking restoration of the civil proceeding, the appellant has offered sufficient cause to explain the delay. The learned Judge, Family Court, Cuttack without appreciating the sufficient cause explained by the appellant seeking condonation of delay, rejected the same taking into account the past conduct of the appellant regarding the manner in which, the civil proceeding has been prosecuted by him.

7. We have carefully gone through the record and find that the explanation offered by the appellant seeking condonation of delay and restoration of the Misc. Case No.7 of 2017 and C.P. No.205 of 1999 appears to be genuine because the medical documents are supported with the explanation offered. Therefore, the learned Judge, Family Court, Cuttack ought to have taken into consideration medical condition of the appellant and condone the delay. In view of the aforementioned, we are inclined to allow the petition. Accordingly, the order dated 23.07.2022 passed by the learned Judge, Family Court, Cuttack in CMA No.1 of 2020 is set aside. Both the parties are directed to appear before the learned Judge, Family Court, Cuttack on 30.03.2026. It is expected that the learned Judge, Family Court, Cuttack shall do well to see that the civil proceeding is concluded as expeditiously as possible preferably within a period of six months.



8. With this observation, the MATA is disposed of.

(Manash Ranjan Pathak)
Judge

(Sibo Sankar Mishra)
Judge

Swarna