



IN THE HIGH COURT OF ORISSA, CUTTACK

W.P.(C) No.26225 of 2025

Debasis Mallick

.....

Petitioner

-Versus-

Sujata Anjali Mallick

.....

Opposite Party

Advocate for the parties

**For Petitioner : Mr. K.P. Mohanty,
Advocate**

For Opposite Party : None

.....

CORAM: JUSTICE SANJAY KUMAR MISHRA

Date of Hearing & Judgment: 26.11.2025

S.K. MISHRA, J.

- 1.** Learned Counsel for the Petitioner is present.
- 2.** Pursuant to order dated 09.10.2025, though notice was issued to the Opposite Party by Speed Post with A.D., as per the office note, the same has returned unserved with a noting "No such person in the address. So return to sender."
- 3.** Learned Counsel for the Petitioner, drawing attention of this Court to the certified copy of order passed in CMA No.65 of 2021, which is at Annexure-4 of the writ petition, submits that the address of the Opposite Party-wife has been furnished in the present writ petition as per the address furnished by her in CMA



No.65 of 2021, in which she is the Petitioner. However, she is intentionally avoiding to receive notice of this Court and appear in the present case.

4. On verification, it is found that the submission made by learned Counsel for the Petitioner is correct.

5. Accordingly, in view of the decisions of the Supreme Court in ***Madan and Co. Vs. Wazir Jaivir Chand***, reported in (1989) 1 SCC 264, so also in ***C.C. Alavi Haji Vs. Palapetty Muhammed***, reported in (2007) 6 SCC 555, notice on the Opposite Party is held to be sufficient.

6. An innocuous prayer has been made by the Petitioner in the writ petition to direct the learned Judge, Family Court, Cuttack to dispose of CMA No.65 of 2021 (arising out of C.P. No.660/2019) on merit at the earliest, preferably within a period of one month from the date of passing of appropriate order by this Court.

7. The brief background fact, which led to filing of the present writ petition, is that the Petitioner-husband preferred C.P. No.660 of 2019 under Section 13(1) of the Hindu Marriage Act, 1955 for dissolution of marriage and passing a decree of divorce. The Opposite Party-wife preferred TRP(C) No.8 of 2020 before this Court for transfer of proceeding in C.P. No.660 of 2019 from the



Court of learned Judge, Family Court, Cuttack to the Court of learned Judge, Family Court, Rourkela, which stood disposed of vide order dated 03.03.2021 directing to transfer the proceeding in C.P. No.660 of 2019 from the learned Judge, Family Court, Cuttack to the learned Judge, Family Court, Rourkela. However, because of non-communication of the said order to the learned Judge, Family Court, Cuttack, it proceeded further in C.P. No.660 of 2019 and a decree of divorce was passed ex-parte on 13.05.2021 in favour of the Petitioner-husband.

8. Subsequently, the Opposite Party-wife preferred CMA No.53 of 2021 under Section 7 of the Family Court's Act, 1984, read with Order IX Rule 13 C.P.C. and Section 151 of C.P.C. with a prayer to recall the ex-parte order dated 08.04.2021 so also ex-parte decree dated 13.05.2021.

9. However, knowing about the order passed by this Court in TRP(C) No.8 of 2020 dated 03.03.2021, learned Judge, Family Court, Cuttack transmitted the case record to the Court of learned Judge, Family Court, Rourkela in C.P. No.660 of 2019 along with records of CMA No.53 of 2021. On transmission of case record to the Court of learned Judge, Family Court, Rourkela, the said CMA was re-registered as CMA No.65 of 2021 in the file of learned Judge, Family Court, Rourkela. Ultimately, learned Judge, Family



Court, Rourkela returned the said case record to the Court of learned Judge, Family Court, Cuttack on 05.02.2024 with certain observations. The said order, being relevant, is extracted below.

“Order dtd 05.02.2024

The case record is put up today for hearing. The petitioner is present. The Opp. Party is absent. Both the parties are absent on call. On perusal of the record, it is found that the present case record has been received by this Court from the Court of Learned Judge, Family Court, Cuttack on 20.12.2021 vide Letter No.709 dated 2021.

*It is also found from the aforesaid letter that the present proceeding has been transferred to this Court as per the order of Hon’ble High Court on 03.03.2021 passed in TRP(C) No.08 of 2020. **On perusal of the said order of the Hon’ble High Court, it is found that the Hon’ble Court has been pleased to transfer C.P. No.660 of 2019 pending before the Judge, Family Court, Cuttack to the Court of Judge, Family Court, Rourkela. But on 13.05.2021 the C.P. No.660 of 2019 has been disposed of by an ex-parte order by the Judge, Family Court, Cuttack and ex-parte Decree has been drawn up.** Thereafter on 17.08.2021 the respondent wife filed an application before the Judge, Family Court, Cuttack for setting aside the judgment and decree passed ex-parte by the said Court. During the pendency of the said application, the Judge, Family Court, Cuttack transferred the case record to this Court for disposal as per law. **It is pertinent to mention her that the C.P. No.660 of 2019 has already been disposed of by the Judge, Family Court, Cuttack and as such this Court is not in a position to dispose of C.P. No.660 of 2019 as directed by the Hon’ble High Court in TRP(C) No.08 of 2020. Consequently, the CMA No.65 of 2021 cannot be disposed of by this Court, since the said case has not been directed to be disposed of.** Hence, the case record of CM.A. No.65 of 2021 be resubmitted to the Judge, Family Court, Cuttack.”*

(Emphasis supplied)



10. It has been alleged by the Petitioner-husband, who is the Opposite Party in CMA No.65 of 2021 that, after receiving back the case record in CMA No.65 of 2021 along with C.P. No.660 of 2019, though there is no legal impediment to proceed further in CMA No.65 of 2021, the learned Judge, Family Court, Cuttack is not proceeding further to conclude the proceeding in CMA No.65 of 2021 on the plea that instruction from the Superintendent TRP(C) Section of this Court is awaiting.

11. Hence, the Petitioner was being constrained to prefer the present writ petition with a prayer to direct the learned Judge, Family Court, Cuttack for early disposal of CMA No.65 of 2021.

12. In view of the facts detailed above so also the order passed by the learned Judge, Family Court, Rourkela, which has already been extracted above, since C.P. No.660 of 2019 was disposed of ex-parte against the Opposite Party-wife by the learned Judge, Family Court, Cuttack, who is the Petitioner in CMA No.65 of 2021, this Court is of the view that learned Judge, Family Court, Cuttack is competent to consider the said application for setting aside the ex-parte judgment passed in C.P. No.660 of 2019.

13. Accordingly, learned Judge, Family Court, Cuttack is directed to proceed further in CMA No.65 of 2021, which is arising



out of C.P. No.660 of 2019, in accordance with law and try to conclude the said proceeding at the earliest, preferably within a period of two months from the date of production of certified copy of this judgment.

14. Accordingly, the writ petition stands disposed of.

15. Urgent certified copy of this judgment be granted on proper application as per rules.

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S.K. MISHRA, J.

*Orissa High Court, Cuttack.
Dated, 26th November, 2025/ Kanhu*

Signature Not Verified

Digitally Signed
Signed by: KANHU BEHERA
Reason: Authentication
Location: High Court of Orissa, Cuttack.
Date: 27-Nov-2025 16:15:12

