

ITEM NO.201

COURT NO.11

SECTION XIA

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).
30999-31000/2008

(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 05/08/2008
IN MATA NO. 5/2004 AND DATED 23/10/2008 IN MC NO. 85/2008 PASSED BY
THE HIGH COURT OF ORISSA AT CUTTACK)

BINAPANI SARANGI

Petitioner(s)

VERSUS

NARENDRA KUMAR MISHRA

Respondent(s)

(WITH INTERIM RELIEF AND OFFICE REPORT)
(FOR FINAL DISPOSAL)

Date : 22/09/2014 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE R.K. AGRAWAL

For Petitioner(s)

Mr. C.K. Rai, Adv.
Ms. Babita Sant, Adv.
Ms. Malini Poduval, Adv.

For Respondent(s)

Mr. S. Ravi Shankar, Adv.

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

Leave granted.

The appeals are disposed of in terms of the signed
order.

[VINOD LAKHINA]
COURT MASTER

[ASHA SONI]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.9119-9120 OF 2014
[Arising out of Special Leave Petition (Civil)
Nos.30999-31000 of 2008]

BINAPANI SARANGI . . . APPELLANT

VERSUS

NARENDRA KUMAR MISHRA . . . RESPONDENT

ORDER

Leave granted.

These appeals filed by the wife - Binapani Sarangi challenges the decree of divorce granted by the High Court in appeal reversing the dismissal of the divorce proceedings as made by the learned trial Court.

We have perused the orders of the High Court under challenge and we have heard the learned counsels for the parties.

The High Court, on consideration of the evidence adduced by the parties came to the conclusion that even if the allegation that the husband Narendra Kumar Mishra was living with another lady, as deposed to by the witnesses, is to be accepted, the same is from the year 1994 whereas the materials on record had demonstrated that the wife was living apart from her husband since 1987. On the said facts, the High Court came to the conclusion that the respondent - wife before it is guilty of desertion from 1987 to 1994 and, therefore, is not entitled to oppose the prayer for divorce as made by the husband.

Having considered the evidence in its totality, we are of the view that the High Court was not right in coming to the said conclusion inasmuch as the marital discord on account of the alleged conduct of the husband had occurred from the year 1987 and the evidence on record points out that it is on account of such conduct on the part of the husband that the wife was compelled

to live separately. If that be so, as the evidence on record demonstrate, the wife had ample justification for living apart from her husband and the said act on her part would not amount to desertion. That apart, the version of the witnesses examined on behalf of the appellant - wife and the brother of the respondent - husband does not clinchingly prove that the second lady was brought to the house by the husband of the appellant only in the year 1994 as held by the High Court.

We are, therefore, of the view that the present is a fit case where interference should be made with the order passed by the High Court. We accordingly, set aside the order dated 5th August, 2008 passed by the High Court of Orissa, Cuttack in M.A.T.A. No.5 of 2004 and restore the order dated 22nd January, 2004 passed by the Family Court, Cuttack, District Cuttack. Insofar as the order dated 23rd October, 2008 passed in Misc. Case No.85 of 2008 is concerned, we make no interference with the directions issued by the High Court.

The appeals are disposed of in the above terms.

.....,J.
(RANJAN GOGOI)

.....,J.
(R.K. AGRAWAL)

NEW DELHI
SEPTEMBER 22, 2014