

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No.324 of 2023

Ankit Thait

....

Appellant

Mr. S. Mishra, Advocate

-versus-

Preeti Thait

....

Respondent

Mr. A. K. Nath, Advocate

CORAM:

JUSTICE ARINDAM SINHA

JUSTICE SIBO SANKAR MISHRA

ORDER

22.11.2023

Order No.

2.

1. Mr. Nath, learned advocate appears on behalf of respondent-wife upon her having received notice of appeal. He submits, there is possibility of settlement if parties are referred to mediation.

2. Mr. Mishra, learned advocate appears on behalf of appellant-husband and submits, his client is 34 years of age while respondent-wife is 31 years of age. While he does not oppose the submission regarding mediation, he informs us that his client has filed for divorce, which is pending before family Court, Bargarh. Impugned judgment has caused prejudice to his client in his divorce case.

3. Section 59 in Mediation Act, 2023 has amended Code of Civil Procedure, 1908 as specified in fourth schedule of the Act. It appears to Court that the dispute between the parties may be settled and there exists elements of settlement as may be acceptable to them. For the purpose, parties are referred to mediation of the Court annexed Mediation Centre. They are directed to approach the centre for commencement of mediation proceeding in terms of the Act.

4. Section 89 in Code of Civil Procedure stands substituted by the Act and the substituted section omits clause (d) under section 89(1) as stood before. Section 7 provides that notwithstanding the non-settlement of dispute under sub-section (1) of section 5, inter alia, the Court may at any stage of the proceeding refer the parties to undertake mediation. Section 5 provides for pre-litigation mediation. Hence, section 7 is not applicable to mediation referred by the Court in a matrimonial appeal. Section 20 provides for registration of mediated settlement agreement, which excepts out, inter alia, Court referred mediation. We have not been shown there is any provision for registration of mediated settlement agreement on a mediation referred by Court otherwise than under section 7. However, section 27 does not require enforcement to only be on a registered mediated settlement agreement. Furthermore, we have not been

shown nor have been able to find provision for contingency of failure of mediation on reference by Court other than under section 7. As such, we must keep the appeal pending.

5. List on 16th January, 2024 for parties to inform Court on mediation settlement arrived at between them, duly signed or failure of mediation, for adjudication of the appeal.

(*Arindam Sinha*)
Judge

(*S. S. Mishra*)
Judge

Prasant

