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JALENDRA PADHIARY

v.

PRAGATI CHHOTRAY

(Civil Appeal No. 3876 of 2018)

B

APRIL 17, 2018

[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

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Judgment/Order – Reasoned Order – Family Court passed a decree of divorce by dissolving the marriage of appellant-husband and respondent-wife – The Court also directed the appellant-husband to pay permanent alimony of Rs.15,00,000/- and litigation expenses of Rs.10,000/- to the respondent-wife – Aggrieved with the part of order which directed appellant to pay permanent alimony, appellant filed appeal before the Division Bench of the High Court, which was dismissed – Whether the Division Bench of the High Court was justified in dismissing the appellant’s appeal in limine and thereby upholding the order of the Family Court insofar as it related to awarding permanent alimony to the respondent-wife – Held: No – On perusal of the order of the Family Court and the High Court, it would show that both Courts failed to apply their judicial mind to the factual and legal controversy insofar as award of permanent alimony to the respondent-wife is concerned – Both the Courts did not even mention the factual narration of the case set up by the parties on the question of award of permanent alimony and without there being any discussion, appreciation, reasoning and categorical findings on the material issues such as, financial earning capacity of wife, a direction to pay Rs.15,00,000/- by way of permanent alimony to the wife was given – Direction wholly unsustainable in law – Neither the Family Court nor the High Court considered the legal principles applicable to the issues involved and passed cryptic and unreasoned orders.

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Allowing the appeal, the Court

HELD: 1. Mere perusal of the order of the Family Court and the High Court would go to show that both the Courts failed to apply their judicial mind to the factual and legal controversy insofar as award of permanent alimony to the respondent(wife) is

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concerned. Both the Courts did not even mention the factual narration of the case set up by the parties on the question of award of permanent alimony and without there being any discussion, appreciation, reasoning and categorical findings on the material issues such as, financial earning capacity of husband to pay the alimony and also the financial earning capacity of wife, a direction to pay Rs.15,00,000/- by way of permanent alimony to the wife was given. Such direction is wholly unsustainable in law. [Para 15] [494-B-D]

2. Time and again, this Court has emphasized on the Courts the need to pass reasoned order in every case, which must contain the narration of the bare facts of the case of the parties to the *lis*, the issues arising in the case, the submissions urged by the parties, the legal principles applicable to the issues involved and the reasons in support of the findings recorded based on appreciation of evidence on all the material issues arising in the case. [Para 16] [494-E]

3. Neither the Family Court nor the High Court kept in mind these legal principles and passed cryptic and unreasoned orders. Such orders undoubtedly cause prejudice to the parties and in this case, it caused prejudice to the appellant(husband) because the orders of the High Court and Family Court deprived him to know the reasons for fixing the permanent alimony amount of Rs.15,00,000/- payable to his wife. [Para 17] [494-F]

4. The manner in which both the Courts passed the order cannot be countenanced and thus the matter is remanded to the Family Court to decide the quantum of payment of permanent alimony afresh in accordance with law keeping in view the observations made supra. [Paras 18, 19] [494-G; 495-A]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3876 of 2018.

From the Judgment and Order dated 03.11.2014 of the High Court of Orissa at Cuttack in MATA No. 113 of 2014.

Kumar Gaurav, B. N. Dubey, Robin Khokhar, Advs. for the Appellant.

Radha Shyam Jena, Adv. for the Respondent.

A **ABHAY MANOHAR SAPRE, J.** 1. Leave granted.

2. This appeal arises from the final judgment and order dated 03.11.2014 passed by the High Court of Orissa at Cuttack in M.A.T.A. No.113 of 2014 whereby the Division Bench of the High Court dismissed the appeal filed by the appellant herein in *limine* at the stage of admission, in consequence, upheld the order dated 17.09.2014 passed by the Family Court, Bhubaneswar in Civil Proceeding No.24 of 2011.

3. The facts of the case lie in a narrow compass and it would be clear from the facts stated hereinbelow.

C 4. The appellant is the plaintiff whereas the respondent is the defendant in the civil suit out of which this appeal arises. The dispute is between the husband and wife and it relates to award of permanent alimony payable to wife.

D 5. The appellant-husband filed a petition against the respondent-wife under Section 13 of the Hindu Marriage Act, 1954 (hereinafter referred to as “the Act”) before the Judge, Family Court, Bhubaneswar seeking decree for dissolution of marriage on the grounds of desertion and cruelty. The respondent filed her written statement and denied the material averments of the appellant’s claim. On the basis of the pleadings and the evidence adduced by the parties, the Family Judge, by order dated 17.09.2014, allowed the petition and passed a decree of divorce by dissolving the marriage. The Family Judge also directed the appellant(husband) to pay permanent alimony of Rs.15,00,000/- and litigation expenses of Rs.10,000/- to the respondent(wife).

F 6. The appellant(husband), felt aggrieved by that part of the order of the Family Court by which the appellant was directed to pay permanent alimony of Rs.15,00,000/- to the respondent(wife), filed appeal before the Division Bench of the High Court. By judgment/decree dated 03.11.2014, the Division Bench of the High Court dismissed the appellant’s appeal and affirmed the order of the Family Court.

G 7. Against the order of the Division Bench of the High Court, the appellant(husband) has filed this appeal by way of special leave in this Court.

H 8. The short question, which arises for consideration in this appeal, is whether the Division Bench of the High Court was justified in dismissing the appellant’s appeal in *limine* and thereby upholding the order of the

Family Judge insofar as it related to awarding permanent alimony of Rs.15,00,000/- to the wife(respondent). A

9. Heard Mr. Kumar Gaurav, learned counsel for the appellant and Mr. Radha Shyam Jena, learned counsel for the respondent.

10. Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow the appeal, set aside the impugned order as also the order of the Family Court to the extent it fixes the award of permanent alimony and remand the case to the Family Court for deciding the question of grant of permanent alimony payable to wife afresh on merits in accordance with law. B

11. The operative portion of the order of the Family Court reads as under: C

“The petition of the petitioner is allowed on contest in favour of the petitioner. A decree of divorce is passed and the marriage between the petitioner and the respondent is hereby declared dissolved with effect from the date of decree. The petitioner is directed to pay permanent alimony of Rs.15,00,000/- and litigation expenses of Rs.10,000/- to the respondent.” D

(emphasis supplied)

12. The order of the Division Bench of the High Court reads as under: E

“After looking into the allegations made and pleadings taken by the parties, as recorded in the impugned judgment, which during the course of argument could not be snipped, we do not find any reason to interfere with the amount of Rs.15,00,000/- awarded as permanent alimony to the wife by the learned Judge, Family Court. In the present time, the said amount is wholly insufficient for the wife to maintain her entire life. F

Since we do not find any merit in the appeal, we dismiss the same in limine at the very stage of admission.” G

13. The only question involved in the appeal before the High Court, which was carried to this Court in this appeal by the appellant (husband), was whether the award of permanent alimony of Rs.15,00,000/- by the H

A Family Court to the respondent(wife) was legally and factually sustainable.

14. Insofar as the grant of decree of divorce in favour of the husband is concerned, it was not challenged by the respondent (wife) in appeal before the High Court and hence it attained finality.

B 15. In our view, mere perusal of the order of the Family Court and the High Court quoted supra, would go to show that both the Courts failed to apply their judicial mind to the factual and legal controversy insofar as award of permanent alimony to the respondent(wife) is concerned. Both the Courts did not even mention the factual narration
C of the case set up by the parties on the question of award of permanent alimony and without there being any discussion, appreciation, reasoning and categorical findings on the material issues such as, financial earning capacity of husband to pay the alimony and also the financial earning capacity of wife, a direction to pay Rs.15,00,000/- by way of permanent alimony to the wife was given. In our opinion, such direction is wholly
D unsustainable in law.

16. Time and again, this Court has emphasized on the Courts the need to pass reasoned order in every case, which must contain the narration of the bare facts of the case of the parties to the *lis*, the issues arising in the case, the submissions urged by the parties, the legal principles
E applicable to the issues involved and the reasons in support of the findings recorded based on appreciation of evidence on all the material issues arising in the case.

17. It is really unfortunate that neither the Family Court nor the High Court kept in mind these legal principles and passed cryptic and
F unreasoned orders. Such orders undoubtedly cause prejudice to the parties and in this case, it caused prejudice to the appellant(husband) because the orders of the High Court and Family Court deprived him to know the reasons for fixing the permanent alimony amount of Rs.15,00,000/- payable to his wife.

G 18. We cannot countenance the manner in which both the Courts passed the order which has compelled us to remand the matter to the Family Court for deciding the issue afresh on merits.

19. In the light of the foregoing discussion, we allow the appeal, set aside the impugned order of the High Court and the order of the
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Family Court insofar as it relates to fixing of Rs.15,00,000/- towards payment of permanent alimony to the respondent(wife) by the appellant(husband) and remand the case to the Family Court to decide the quantum of payment of permanent alimony afresh in accordance with law keeping in view our observations made supra. A

20. We, however, make it clear that we have refrained ourselves from making any observation on merits of the controversy while forming an opinion to remand the case to the Family Court for the reasons mentioned above. The Family Court would, therefore, decide the issue, uninfluenced by any of our observations, strictly in accordance with law. If necessary, the Family Court would also grant liberty to the parties to amend the pleadings and adduce evidence on the question of quantum of payment of permanent alimony. B C

21. The appeal is accordingly allowed. Impugned order of the High Court and the order of the Family Court insofar as it relates to fixation of permanent alimony of Rs.15,00,000/- are set aside with the aforesaid directions for compliance. D

22. We direct the Family Court to decide the case within six months as an outer limit.

23. Till the disposal of the case, the appellant(husband) will continue to pay monthly maintenance amount, which was fixed by the Family Court, to the respondent regularly. Needless to say, the payment of monthly maintenance will be subject to the final determination made by the Family Court. E