
(2014) 03 OHC CK 0053
In the Orissa High Court
Case No : W.P.(C) No. 3464 of 2012

Ashok Kumar Swain

APPELLANT

Vs

Mamata Pradhan

RESPONDENT

Date of Decision : 27-03-2014

Acts Referred:

Citation : (2014) 2 OLR 86

Hon'ble Judges : C.R. Dash, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

C.R. Dash, J.—Heard learned counsels for the parties.

2. The wife in a matrimonial proceeding is the decree holder and the husband is the judgment debtor. After disposal of the matrimonial proceeding vide MAT Case No. 45 of 2004 by the Civil Judge (Sr. Division), Puri, Execution Case No. 12 of 2006 was initiated by the decree holder wife in the said Court for execution of the decree. Against the order dated 03.02.2007 passed by the executing Court, the decree holder wife approached this Court in W.P. (C) No. 6080 of 2009, The aforesaid writ petition was disposed of at the admission stage with the following observation:

"The wife is the writ petitioner, against whom an order passed on 3.2.2007 and B.C. 12 of 2006 on the file of Civil Judge (Sr. Division), Puri provides for payment of installment and if there is any default the request of decree holder for attachment may be considered. Learned counsel for the writ petitioner submitted that no installment amount has been paid to her. Therefore, naturally the Court should have taken attachment proceeding even on 28.2.2007 and the learned counsel for the petitioner submitted that since February, 2007 no attachment was made in his execution proceeding and therefore, there is accumulation of arrears of maintenance.

The lower Court is directed to dispose of E.C. pending within a period of one

month from the date of receipt of records."

3. While the matter stood thus, Family Court was established at Puri.

4. The judgment debtor husband filed a petition before the executing Court for transfer of the execution case to the Family Court as the executing Court lacks jurisdiction after establishment of the Family Court. Decision Of this Court in the case Gourhari Das Vs. Smt. Santilata Singh and Others, was cited before the executing Court to substantiate the contention that said executing Court has no jurisdiction any more after establishment of the Family Court.

5. The executing Court however, refused to transfer the execution case in view of the observation of this Court in W.P.(C) No. 6080 of 2009 targeting disposal of the execution case within a period of one month from the date of receipt of records by the executing Court Itself.

6. Perusal of decision of this Court in Mayadhar Mallik's case clearly shows that after establishment of Family Court the Civil Court or criminal Court has no jurisdiction to entertain a matrimonial proceeding between the parties.

7. In view of such settled law, observation by this Court in W.P.(C) No. 6080 of 2009 targeting disposal of the execution case by the executing Court does not confer any jurisdiction on the executing Court.

8. In view of the decision supra, the Execution Case No. 12 of 2006 stands transferred to the Court of Judge, Family Court, Puri and the Judge, Family Court, Puri is directed to comply with the observation of this Court passed in W.P.(C) No. 6030 of 2009 by disposing of the execution case within a period one month from the date of receipt of records.

9. The writ petition- is accordingly disposed of.