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**(2014) 12 OHC CK 0004**  
**In the Orissa High Court**  
**Case No : MATA No. 13 of 2012**

Ranjukta Mishra

APPELLANT

Vs

Pravanjan Mishra

RESPONDENT

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**Date of Decision :** 18-12-2014

**Acts Referred:**

Family Courts Act, 1984 — Section 13(i-A)(ii) 19  
Hindu Marriage Act, 1955 — Section 13 13(i-A)(ii) 25 9  
Protection of Women From Domestic Violence Act, 2005 — Section 12

**Citation :** (2015) 120 CLT 127 : (2015) 3 DMC 385

**Hon'ble Judges :** Vinod Prasad, J; Pramath Patnaik, J

**Bench :** Division Bench

**Advocate :** S. Mishra and A.K. Parida, Advocate for the Appellant; D. Sahu and P.M. Barik, Advocate for the Respondent;

**Final Decision :** Allowed

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## Judgement

Pramath Patnaik, J.

1. The instant appeal under Section 19 of the Family Courts Act has been filed challenging the legality & propriety of the Judgment dated 19.05.2011 passed in C.P. No. 347 of 2010 by the Learned Judge, Family Court, Puri for not delving into the quantum of payment of permanent alimony by Respondent to Appellant & her minor daughter notwithstanding the dissolution of marriage by a decree of divorce. The facts leading to filing of the petition under Section 13(i-A)(ii) for decree of dissolution of marriage by the Respondent in a nutshell are that both the spouses being "Hindu" were lawfully married according to the Hindu rites on 13.05.2003 & the marriage ceremony was performed in the house of Appellant at village Shukla Brahmanapada & after consummation of marriage out of their wedlock one daughter namely Kajal was born. But the marital life ran into rough weather due the obstinate & non-cooperative attitude of the Appellant. Since the Appellant insisted to live separately from the joint family in her parental house to which the Respondent did not accede to such proposal. On 05.12.2006, the

Appellant left the house of the Respondent with her father with ornaments. Since then the Appellant has been living in her parental house. Despite best efforts the Appellant did not join the company of Respondent without any justifiable reason. Since the Appellant has deserted the Respondent & withdrawn from his society without any just cause & the Respondent was deprived of conjugal life, left with no alternative, the Respondent filed a matrimonial case bearing MAT Case No. 176 of 2007 under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. The Appellant did not appear in the case, as a result of which said case was decreed ex-parte by Order Dated 20.08.2009 directing the Appellant to join with the company of the Respondent within a month to discharge her marital obligation. In spite of ex-parte Judgment dated 20.08.2009 passed in MAT Case No. 176 of 2007, since the Appellant did not comply the said order, the Appellant initiated litigation in the Court of Learned S.D.J.M., Puri under Section 12 of P.W.D.V. Act vide I.C.C. No. 435 of 2009. Finding no other alternative, the Respondent was constrained to take shelter of this Court by filing the civil proceeding under Section 13 of the Hindu Marriage Act.

2. In response to the notice under Section 13(i-A)(ii) of the Hindu Marriage Act, the Appellant filed the written statement. In the written statement, the factum of marriage dated 13.05.2003 has been admitted by the Appellant. But the Appellant has stated that she was always cooperative & was discharging her marital obligations but due to ill-treatment & mental torture meted out by the Respondent, the Appellant could not stay in the company of the Respondent. It has further been stated in the written statement that the Appellant was not aware of any case under Section 9 of Hindu Marriage Act. Since no notice was served on the Appellant in the said proceeding nor was aware of any ex-parte Judgment dated 20.08.2009 in MAT Case No. 176 of 2007. Even if any Judgment has been passed in the said proceeding neither the Respondent nor anyone from family made an attempt to take the Appellant to the house of her husband at any point of time. Since physical & mental torture became unbearable, the Appellant was compelled to file I.C.C. Case No. 435 of 2009. It has been stated in the written statement that the Appellant was compelled to remain in her parental house along with her minor daughter as she had no independent means of livelihood. On the other hand, the Respondent is an established businessman at Gop Chhak at Brahmagiri & the Respondent has not taken any care to maintain the Appellant & her minor daughter who is prosecuting her studies in a Public School at Shukla. The parents of the Appellant also made effort to reconcile the matter but the Respondent & his family members deliberately & malafidely neglected & misbehaved the Appellant & her daughter. In the written statement the Appellant has also refuted the allegation of desertions levelled against her before the Learned Judge, Family Court, Puri. The point for determination is whether there has been restitution of conjugal rights between the parties to the marriage for a period of one year or more after passing of decree of restitution of conjugal rights in a proceeding in which they are parties requiring dissolution of marriage? The Appellant & Respondent have been examined as R.W. 1 & P.W. 1

respectively. On perusal of the pleadings from both the sides & scanning through evidence the Learned Judge, Family Court, Puri has been pleased to order that the marriage between the parties is hereby dissolved by a decree of divorce vide Judgment dated 19.05.2011 in C.P. No. 347 of 2010.

3. Heard Learned Counsel for the Appellant & the Respondent in the presence of both the spouses & their daughter.

4. Learned Counsel for the Appellant has assailed the impugned judgement dated 19.05.2011 passed by Learned Judge, Family Court, Puri in C.P. No. 347 of 2010 on the following grounds: -

(i) That the Judgment passed by Learned Judge, Family Court has erroneously appreciated the factual position thereby rendering an illegal Judgment which warrants interference by this Court. The Learned Judge while decreeing the dissolution of marriage under Section 13(i-A)(ii) of the Hindu Marriage Act has not passed any order directing the Respondent for payment of permanent, alimony for maintenance & sustenance of Appellant & her minor daughter.

(ii) The second limb of the argument of Learned Counsel for the Appellant is that of allegations of torture meted out to the Appellant & her daughter as stated in the written statement has not been rebutted by any cross-examination or by filing of rejoinder. Therefore, the allegations of torture stated in the written statement have gone unchallenged/uncontroverted.

(iii) Learned Counsel for the Appellant further submits that since the Appellant & her daughter are passing through a phase of financial stringency solely depending on her parents. Taking-into considerations, the financial status of the Respondent Learned Judge, Family Court ought to have granted permanent alimony.

5. Learned Counsel for the Respondent on the contrary submitted that the Judgment passed by the Learned Judge, Family Court, Puri does not call for any inference since the Appellant by her own conduct has not complied decree of restitution of conjugal rights under Section 9 of Hindu Marriage Act vide ex-parte Judgment dated 20.08.2009 in MAT Case No. 176 of 2007. Therefore the Learned Judge, Family Court, Puri has recorded correct finding & has rendered the Judgment warranting no interference by this Court.

6. No doubt, after solemnisation of marriage both the spouses are under moral as well as legal a obligation to well maintain their conjugal relationships living together peacefully with a view of getting marital bliss. But in the instant case in spite of desire of the Respondent to keep the Appellant as his wife & refusal of the Appellant to live with the Respondent being adduced in the evidence on 12.05.2011 the wedlock between the spouses became a deadlock. On evaluation of the pleadings the entire evidence on record the Learned Judge, Family Court, Puri has rightly passed the Judgment by passing a decree of dissolution of marriage. But Learned Judge, Family Court, Puri has failed to appreciate the

financial position of the destitute wife & her daughter & permanent alimony ought to have granted in the impugned Judgment. It is stated by the Bar & so also by the spouses that after the decree of divorce, the Respondent has got married & the Respondent is blessed with a son aged about two years. So the question of re-union of the parties is out of question. Since the Appellant has challenged the impugned Judgment for award of permanent alimony; now the question which remains to be determined by this Court is whether the Appellant is entitled to a permanent alimony & what should be the quantum of permanent alimony for the Appellant & her minor daughter taking into account status of husband (Respondent) & social status to which both parties belong.

7. Hon"ble Apex Court in a catena of decisions has dealt with Section 25 of the Hindu Marriage Act pertaining to permanent alimony & maintenance. The guidelines propounded by the Hon"ble Apex Court in landmark Judgments in the case of Vinny Parmvir Parmar Vs. Parmvir Parmar, . Paragraph - 12 is reproduced below:-

12. As per Section 25, while considering the claim for permanent alimony & maintenance of either spouse, the husband's own income & other property, & the income & other property of the applicant are all relevant material in addition to the conduct of the parties & other circumstances of the case. It is further seen that the Court considering such claim has to consider all the above relevant materials & determine the amount which is to be just for living standard. No fixed formula can be laid for fixing the amount of maintenance. It has to be in the nature of things which depend on various facts & circumstances of each case. The Court has to consider the status of the parties, their respective needs, the capacity of the husband to pay, having regard to reasonable expenses for his own maintenance & others whom he is obliged to maintain under the law & statute. The Courts also have to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status & mode of life she was used to live when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party. These are all the broad principles Courts have to be kept in mind while determining maintenance or permanent alimony.

8. In the case of U. Sree Vs. U. Srinivas, , the Hon"ble Supreme Court has determined the permanent alimony taking into consideration the status of the husband & social strata to which both the parties belonged. Hon"ble Apex Court has held that no arithmetical formula can be adopted but the alimony would depend on status of parties, their social needs, financial capacity of husband & other issues & the Court has to ensure that the wife lives not luxuriously but with dignity with comfort. Therefore, the quantum is to be fixed considering the status & strata to which the husband & the wife belong.

9. So far as the basis of the claim for permanent alimony of the Appellant is concerned, no evidence has been laid relating to the monthly income of the

Respondent. During course of hearing, in the presence of both the spouses, Learned Counsel for the Appellant has strenuously urged that the Respondent has got a small restaurant. Apart from that Respondent is getting monthly rent of Rs. 4000-5000 per month to which Learned Counsel for the Respondent vehemently objected. Since after decree of divorce, Respondent has got married & blessed with a son aged about two years which it can be presumed it Respondent is leading a if not luxurious but a comfortable life. It is the bounden duty of the Respondent to maintain his stringent wife with comforts & dignity. The Appellant ought not to be allowed a life of a destitute. So considering the minimum Rs. 800 (rupees eight hundred) per month will be the barest minimum to enable the Appellant ana her minor daughter to eke out a living. Apart from that the Appellant has to maintain her minor daughter. The Appellant at the time of filing of the MATA was 27 years & the life expectancy of a female being 70 years minimum, we feel it appropriate to enhance the monthly permanent alimony to Rs. 800 (rupees eight hundred) per month & taking into consideration compounding the same for 43 years, the whole permanent alimony comes to around about Rs. 4,12,800 (rupees four lakh twelve thousand eight hundred). The amount of permanent alimony will be paid to the Appellant wife within a period of six months in three equal instalments. First instalment falling on 31.1.2015, second instalment on 31.3.2015 & the last instalment shall be paid by 31.5.2015. On failure of payment of aforesaid payment in time, the amount shall carry 7% interest per annum & the Appellant will be free to take recourse to law for its realisation.

With the aforesaid direction, we allow the MATA No. 13 of 2012 but there shall be no order as to cost.

Vinod Prasad, J.

I agree.