

Party Name : SANDHYA RANI DEBBARMA Vs UNION OF INDIA & ORS

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HONBLE THE CHIEF JUSTICE DEEPAK GUPTA THE HONBLE MR JUSTICE U. B. SAHA

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The applicant-petitioner has filed an application for amendment of the petition. The amendment now sought for is that there is a custom whereby in the Tripuri community the husband is entitled to marry second time if the first wife is unable to procreate. However, the second marriage can only be performed with the consent of the first wife and this consent should be given in the presence of the Rowaza, the head of the clan of the Tribal Community. We are not going into question as to whether this custom exists or not but if such custom exists and the petitioner relies upon such custom then the custom has to be proved in accordance with law. Furthermore, we are of the considered view that oral evidence will have to be led to prove the following facts:

- (i) Existence of the custom;
- (ii) Consent of the first wife;
- (iii) Presence of the Rowaza.

These matters cannot be decided in a writ petition. Therefore, the writ petition is disposed of with liberty given to the applicant-petitioner to establish her right as a second wife in a civil Court in accordance with law.

Therefore, the amendment application as well as the writ petition are disposed of.