

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 333 of 2016

1. Basant Pandey S/o Shri Purnanad Pandey, Aged About 52 years, R/o Dindayal Colony Mangala, House No. L.I.G. 162, Police Station - Civil Line, Tahsil & District - Bilaspur (Chhattisgarh) (Applicant)

---- Petitioner

Versus

1. Smt. Nandani Pandey W/o Shri Basant Pandey, Aged About 48 years, D/o Late Shri Keshari Prasad Pandey, R/o Through - Rakesh Verma, Seepat Road, Near Pariwar Niyojan Karyalay and Shiv Mandir Sarkanda, Police Station - Sarkanda, Tahsil & District - Bilaspur (Chhattisgarh)(Non-applicant)

---- Respondent

For Petitioner – Shri Rishi Rahul Soni, Advocate.

For Respondent – None, not noticed.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

13/05/2016

1. Heard on admission.
2. Facts in brief required for the instant WP(227) are that Civil Suit No.270A/2010 is pending before the Family Court Bilaspur under the relevant provisions of Section 13(1)(ia) of the Hindu Marriage Act, 1955 between the parties wherein the respondent had preferred F.A.(M) No.72/2013 being aggrieved by the judgment dated 27-07-2013 passed by the said Family Court. This Court vide order dated 24-06-2014 set aside the judgment and decree passed by the trial Court and remanded back the matter, as per order. Thereafter, while hearing the matter, the trial Court on oral submission decided the objection made on behalf of the present petitioner; the trial Court after hearing the parties and also after appreciation of paras 7 and 8 of the order passed by this Court dated 24-06-2014 held that in addition to provide opportunity to adduce evidence on the basis of the aforesaid document this

High Court also directed to adduce other evidence and to decide the matter afresh, hence, the learned trial Court held that the respondent may cross-examine the witnesses for such additional points in which earlier no questions were asked. The learned trial Court further held that on those points wherein the questions have already been submitted respondent shall have no authority to examine on those issues. Against the said order present petitioner has preferred the instant WP(227) and submitted that order passed by the trial Court is against the direction of this Court. The trial Court cannot allow the respondent to ask questions for the points for which no question put to the witnesses earlier, hence, it is submitted that the order passed by the trial Court dated 18-04-2016 be quashed.

3. Heard learned counsel for the petitioner.

4. Learned counsel supported the entire grounds taken in the instant WP(227) and submitted that the order passed by the trial Court dated 18-04-2016 is not as directed by this Court, hence, the instant WP(227) may be allowed and the impugned order may be quashed.

5. For the purpose of appreciation of the relief as sought, perused the order passed by this Court dated 24-06-2014 and the order passed by the trial Court dated 18-04-2016 are perused.

6. For appreciation of the submission made in this behalf, paras 7 and 8 of the order passed by the Hon'ble Division Bench of this Court dated 24-06-2014 are relevant which read as under:-

“7. In the light of the aforesaid documents, judgment and decree impugned is set aside.

8. The case is remanded to the Court below for providing opportunity of adducing evidence on the basis of aforesaid documents and other evidence and decide the matter afresh. The respondent is

required to file admissible documents relating to said petition before the trial Court. Parties to remain in attendance before the trial Court on **28.7.14.”**

7. From perusal of the order passed by the trial Court, it appears that merely on the basis of the oral submission and objection, the trial Court was very generous to decide those submission and preliminary objection. As per provision of procedural laws, if the petitioner wants to pray something in connection with the order passed by this Court, he ought to have filed a specific application for the same. The Court merely on the oral objection of the petitioner, heard both the parties and decided the submission and objection. From perusal of the order passed by this Court at para 8, the Honb'le Division Bench of this Court gave opportunity also for “other evidence”. The Court below simply appreciated the said fact and submitted that the respondent may ask questions for those points not put in earlier examination and also the respondent is not permitted to put questions which were submitted earlier during examination.

8. In the considered view of this Court, the trial Court was very correct while appreciating the scope of the direction contained in words “other evidence”. There is no any illegality, infirmity and also the Court below complied with the entire genesis of jurisprudence to permit the respondent to put questions for the points for which earlier no any question was put to the witnesses as to eliminate any subsequent submission during argument that the said part of the evidence was unrebutted.

9. As per the considered view of this Court, the trial Court has not committed any illegality, impropriety or incorrectness, on the other hand, acted as per direction of this Court. Hence, the instant WP(227) has no substance and the same is liable to be dismissed at the motion stage itself.

10. Consequently, the WP(227) is hereby dismissed at the motion stage itself.
11. Petition dismissed.
12. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE