

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.14661 OF 2010

Girish Ch. Moharana

....

Petitioner(s)
Mr.B.B.Mishra,Adv.

-versus-

Laxmipriya Mohapatra

....

Opposite Party(s)
Mr.L.Mishra,Adv.

CORAM:
JUSTICE BISWANATH RATH

ORDER
20.12.2022

Order No.

23.

1. Heard learned counsel for the Parties.
2. The Writ Petition involves a challenge to the order at Annexure-6 particularly the order dated 30.10.2009 allowing the application under Order 9 Rule 13 of C.P.C. Taking this Court in reference to the date fixed for appearance, learned counsel for the Petitioner claims that the date of appearance was fixed to 12.07.2010 and the final order came to be passed on 30.10.2009.
3. Through the pleading, it has been brought to the notice of the Court that there has been, in fact, no service of notice on the Petitioner before disposal of the Application under Order 9 Rule 13 of C.P.C. in taking away the ex-parte judgment in C.P. No.845 of 2007.
4. Learned counsel in his opposition submits again in reference to the notice at Annexure-5 that the notice appended therein was involving the proceeding vide C.P. No.845 of 2007 has nothing to do with the Misc. Case No.113 of 2009 disposed of on 30.10.2009 and the impugned order herein. In the entire reading of the order-sheet vide

Annexure-6, this Court finds, there has been several orders on the aspect of issuing notice to the husband. The proceeding even involved issuing of notice to the husband through special messenger came back with S.R. on refusal to receive notice by the husband. For there is service of notice through special messenger and for the notice at Annexure-5 has no relevancy with the Misc. Case No.113 of 2009, this Court finds, there is no scope to interfere in the impugned order vide Annexure-6. Further since by the impugned order, the main proceeding decided in ex-parte has been reopened, there is sufficient opportunity to the husband to face the C.P. proceeding and there is no prejudice to either party.

5. In the circumstance, this Court declines to interfere in the impugned order. Parties are directed to appear in the C.P. No.845 of 2007 on 04.01.2023. The C.P. proceeding pending since 2007 shall be decided as expeditiously as possible within a period of four months. Considering the Petitioner has already married second time and blessed with a child in the meantime, taking advantage of the ex-parte order and also advantage of no stay of such order in the main proceeding may also be kept in view while determining the issue in the C.P. proceeding. There is allegation that second marriage of the husband taken place before expiry of Appeal period is kept open to be agitated and decided by the trial Court.

6. The Writ Petition thus stands disposed of.

(Biswanath Rath)
Judge

Swarna