

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 5850 of 2022

Subhashree Sahoo ***Petitioner***
Mr.Santosh Kumar Samantaray, Advocate

-versus-

Sesadev Mohanty ***Opp. Parties***
Mr. Pradeep Kumar Mohapatra, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
12.07.2022

Order No.

5.
 1. This matter is taken up through Hybrid mode.
 2. Petitioner in this writ petition seek to assail order dated 11th February, 2022 (Annexure-6) passed in CP No.106 of 2021, whereby learned Judge, Family Court, Khordha rejected an application under Section 10 CPC filed by the Petitioner, holding that the Petition does not satisfy the requirement for stay of further proceeding.
 3. Mr. Samantaray, learned counsel for the Petitioner submits that the Petitioner has filed CP No.184 of 2020 under Section 11 of the Hindu Marriage Act, 1955 (for short, 'the Act') to declare the marriage between Petitioner and Opposite Party to be null and void. The Opposite Party husband has also filed CP No.106 of 2021 under Section 9 of the Act for restitution of conjugal right. It is further contended that if the proceeding under Section 9 of the Act filed by the Opposite Party-husband is disposed of, then the CP No.184 of 2020 filed by the present Petitioner will be infructuous and the grievance of the Petitioner will remain un-adjudicated. Learned Judge, Family Court, Khordha, without considering the purpose for

which the petition for stay of further proceeding in CP No.106 of 2021 is filed, rejected the same holding that the same does not satisfy the requirements of Section 10 of CPC.

4. Mr. Mohapatra, learned counsel for the Opposite Party-husband defended the impugned order stating that the consideration of the petition under Sections 9 and 11 of the Act are quite distinct and different. Further, learned Judge, Family Court, Khordha has rightly observed it does not satisfy the provisions of Section 10 CPC to grant the relief to the Petitioner by staying further proceeding of CP No.106 of 2021. In that view of the matter, the writ petition should not be entertained.

5. In course of hearing, learned counsel for both parties submit that both the CP No.106 of 2021 and CP No.184 of 2020 pending before learned Judge, Family Court, Khordha should be heard analogously.

6. In view of the above, this Court, without interfering with the impugned order under Annexure-6, disposes of the writ petition with an observation that in the event, petition(s) for analogous hearing of CP No.106 of 2021 and CP No.184 of 2020 is/are filed, the same shall be considered at an early date in accordance with law giving opportunity of hearing to the parties concerned before proceeding with the aforesaid CPs.

7. Interim order dated 5th April, 2022 passed in IA No.2933 of 2022 stands vacated.

Issue urgent certified copy of the order on proper application.

s.s.satapathy

K.R. Mohapatra)
Judge