

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 7114 OF 2022

Jyotirmayee Senapati @ Sahoo

Petitioner

Mr. A.P. Bose, Advocate

-versus-

Sandeep Kumar Senapati

.... Opp. Party

Mr. Prasanta Kumar Jena, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

22.04.2022

Order No.

2. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition prays for a direction to set aside the order dated 29th January, 2021 passed in C.P. No.147 of 2017, whereby learned Judge, Family Court, Khurda allowed an application filed by Opposite Party-Husband under Order VI Rule 17 C.P.C. for amendment of the petition filed by him under Section 13(1) of the Hindu Marriage Act, 1955 (for short 'the Act').
3. Mr. Bose, learned counsel for the Petitioner submits that marriage between the Petitioner and Opposite Party was solemnized on 17th February, 2016 and the same was consummated at the residence of Opposite Party. Due to marital discord between the parties, a civil proceeding was filed under Section 13(1) of the Act before learned Judge, Family Court, Nayagarh, which was subsequently transferred to the learned Judge, Family Court, Khurda and re-numbered as Civil No. 147 of 2017. After the commencement of the trial, the Opposite Party filed an application under Order VI Rule 17 C.P.C. intending to

withdraw the admission made by him in Paragraph-3 of the petition for divorce. In Paragraph-3 of the petition, the Opposite Party pleaded as such:

“That after the marriage both petitioner and Opposite Party consummated their marriage at the residence of the Plaintiff-Petitioner.”

By filing the petition for amendment under Annexure-3, the Opposite Party sought for the following amendment:

“Schedule of amendment (1) in Paragraph-3 of the Petition, the words ‘had not’ be inserted after the words ‘Petitioner and Opposite Party’.”

He, therefore, submits that it is a clear withdrawal of the admission made by Plaintiff-Opposite Party in the petition for divorce. Learned Judge, Family Court, Khurda without appreciating the same from its proper prospective allowed the amendment vide his order dated 29th January, 2022. Hence, this writ petition has been filed.

4. Mr. Jena, learned counsel for the sole Opposite Party refuting submission made by Mr. Bose, learned counsel for the Petitioner argues that the petition for amendment was never filed after commencement of the trial. It is clear from the petition for amendment (Annexure-3) that the said petition was verified and filed on 27th November, 2017, which was even prior to filing of the written statement by the Petitioner on 13th December, 2017. As such, the petition for amendment was filed much prior to commencement of the trial. Further, the Opposite Party sought for amendment to correct the inadvertent error in Paragraph-3 of the petition under Section 13(1) of the Act.

5. Referring to the averments made in Paragraphs-5 and 15 of the petition, Mr. Jena, learned counsel for the sole Opposite Party submits that the marriage between the Petitioner-Opposite Party was never consummated. Paragraph-5 of the petition reads as under:

“That the Plaintiff-petitioner had a highly hope regarding his married life, but all the hopes was shutdown in the 4th night i.e. on 20.2.2010 itself when he the defendant-Opp. Party refused to co-habit with the Plaintiff-Petitioner or consummation of their marriage stating that she had no consent for the marriage and the family members of the Plaintiff-Petitioner are not acceptable to her. She further stated on that day that she would think of the conjugal relationships after return from her father’s house. The defendant-Opp. Party did not have any physical company with the Petitioner till 6.3.2016 i.e. departure from the matrimonial house.”

Paragraph-15 of the petition reads as under:

“That the cause of action for filing this suit arose on 20.02.2016 when the defendant-Opp. Party refused co-habitation in the 4th night marriage i.e. on 6th March, 2016 the Opp. party left the matrimonial house by disclosing notto return, on 12.06.2016 when the meeting convened to return, the peaceful dispute failed to deceive the dispute and lastly on when the Plaintiff-Petitioner made a last effect in requesting the Opp. party to join him for matrimonial obligation.”

He, therefore, submits that the allegation of the Petitioner to the effect that the Petitioner by virtue of the amendment intends to withdraw the admission at Paragraph-3 of the petition is not correct. Hence, he submits that the writ petition merits no consideration and is liable to be dismissed.

6. Heard learned counsel for the parties and perused the impugned order under Annexure-6.

7. On perusal of the record, it is apparent that the application for amendment was filed on 27th November, 2017, i.e. much prior to filing of the written statement and commencement of the trial. Further, the Petitioner at Paragraph-5 of the petition under Section 13(1) of the Act has categorically stated that the marriage was never consummated till the petitioner left the matrimonial home on 6th March, 2016. It also appears from the pleadings that the Petitioner never returned to the matrimonial home after 6th March, 2016. Thus, it is apparent that the averment made in Paragraph-3 of the Petitioner is an inadvertent one. While adjudicating the matter, learned Judge, Family Court, Khurda has rightly relied upon the ratio decided in the case of *Revajeetu Builders and Developers -v- Narayanaswamy and Sons and others*, reported in (2009) 10 SCC 84 and passed the impugned order allowing the amendment sought for. Hence, I find no infirmity in the impugned order.

8. Accordingly, this writ petition being devoid of any merit stands dismissed.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

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