

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 6663 of 2019

Smarita Tripathy

..... Petitioner

Mr. Ashok Kumar Behera, Advocate

-versus-

State of Odisha and another

.... Opp. Parties

Mr. Satyabrata Mohanty, Advocate
(For Opposite Party No.2)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

11.08.2022

Order No.

8. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition seeks to assail the order dated 12th December, 2018 (Annexure-4) passed by learned Judge, Family Court, Jajpur in CP No.95 of 2017, whereby he allowed an application filed by the Opposite Party-Husband under Order VI Rule 17 CPC.
3. Mr. Behera, learned counsel for the Petitioner submits that the Opposite Party has filed the aforesaid Civil Proceeding under Section 13(1) of the Hindu Marriage Act, 1955 (for short, 'the Act') for dissolution of marriage by a decree of divorce. Originally, the Civil Proceeding was filed on the ground of cruelty. Just before commencement of trial, the Opposite Party-husband filed an application under Order VI Rule 17 CPC to introduce completely new story by incorporating the plea of desertion. Although a detailed objection was filed to the said amendment petition, learned Judge, Family Court without considering the objection raised by the Petitioner (respondent

therein), allowed the application by a non-speaking order. The amendment if allowed will certainly change the nature and character of the proceeding. Thus, he prays for setting aside of the impugned order.

4. Learned counsel for the Opposite Party-husband objecting to the submission made by learned counsel for the Petitioner contends that the amendment sought for is only an elaboration of the pleadings already made in the petition under Section 13(1) of the Act. The proceeding was initiated on the ground of cruelty and desertion. Hence, it is not correct to allege that by virtue of the amendment the Opposite Party is trying to introduce a new plea of desertion. He further submits that although the impugned order is not a reasoned one, but the amendment sought for is essential for just adjudication of the case. Hearing of the Civil Proceeding has not commenced. Hence, there is no legal impediment for allowing an amendment. He, therefore, prays for dismissal of the writ petition.

5. Taking into consideration the submissions of learned counsel for the parties and on perusal of the impugned order, it is apparent that the Opposite Party husband in the petition under Order VI Rule 17 CPC has proposed to amend by introducing certain new facts for adjudication of the Civil Proceeding. It further appears that although a detailed objection was filed to the petition for amendment, but the same was not taken into consideration while adjudicating the petition. On perusal of order under Annexure-4, it appears that no reason has been assigned by learned Judge, Family Court, Jajpur,

while allowing the application for amendment. In view of the above, this Court is of the considered vide that the petition under Order VI Rule 17 CPC requires fresh consideration.

6. Accordingly, the impugned order is set aside and the matter is remanded back to learned Judge, Family Court, Jajpur to consider the application under Order VI Rule 17 CPC afresh giving opportunity of hearing to the parties.

Issue urgent certified copy of the order on proper application.



(K.R. Mohapatra)
Judge