

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 8878 of 2022

Satya Shankar Panda

.....

Petitioner

Mr. Dayananda Mohapatra, Advocate
on behalf of Ms. Priyanka Jena, Advocate

-versus-

Tanya Mishra

....

Opp. Party

Mr. Arijeet Mishra Mishra,

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

25.04.2022

Order No.

1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition prays for a direction set aside order dated 21st March, 2022 (Annexure-1) passed in CP No.959 of 2018, whereby learned Judge, Family Court, Bhubaneswar rejected an application dated 5th November, 2021 (Annexure-7) filed by the Petitioner with prayer to recall the Respondent/Opposite Party to participate in hearing of the petition dated 1st September, 2021 as well as petition dated 7th September, 2021 and to permit him to cross-examine her
3. Mr. Mohapatra, learned counsel for the Petitioner submits that three petitions were filed by the Petitioner, which were taken up for consideration on 21st March, 2022. One was under Order VII Rule 11 (d) CPC; second one was for examination of the Petitioner as well as Opposite Party by a medical board with regard to their alleged impotence; and third was for recall of the ex-parte order dated 26th October, 2021. All these petitions were disposed of on 21st March, 2022 including the petition to recall PW-1 for cross-examination.

3.1 It is his submission that as the aforesaid petitions were pending, Petitioner could not cross-examine PW-1 earlier for which he was set ex-parte. If an opportunity is given, he is ready and willing to participate in the hearing of CP No.959 of 2018 and cross-examine PW-1 on the date to be fixed by the Court.

4. Mr. Mishra, learned counsel for the Opposite Party vehemently objected to the above submission. It is his contention that this Court in an earlier writ petition, i.e., W.P.(C) No.13924 of 2021 disposed of on 23rd June, 2021, directed for early disposal of CP No.959 of 2018 within a period of nine months. The Petitioner, in order to frustrate such direction and to harass the Opposite Party is filing unnecessary petitions to protract the litigation. As such, the Petitioner should not be shown any leniency in the matter. The matter is now posted to 26th April, 2022 for cross-examination of PW-2. The Petitioner may participate in the hearing by cross-examining PW-2. He, therefore, prays for dismissal of the writ petition.

5. Taking into consideration the submissions made by learned counsel for the parties and the facts and circumstances, this Court, feels that the Petitioner in order to show his bona fide, should be given a further opportunity to cross-examine PW-1, but at the same time the Opposite Party should be duly compensated for the loss she has sustained.

6. In view of the above, this Court sets aside the order dated 21st March, 2022 under Annexure-1, so far as it relates to rejection of petition for recalling order dated 26th October, 2021 and directs the Petitioner to appear before learned Judge,

Family Court, Bhubaneswar on the date fixed, i.e., tomorrow and file an application to cross-examine the PW-1.

7. In such event, learned Judge, Family Court, Bhubaneswar shall allow the Petitioner to cross-examine PW-1 by fixing suitable date subject to payment of cost of Rs.5,000/- (rupees five thousand only) to the Opposite Party on the date to be fixed and proceed with the matter accordingly.

7.1 It is further made clear that no prayer of such nature shall be entertained at the instance of the Petitioner in future.

8. With the observation and direction, as aforesaid, the writ petition is disposed of.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

