

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 8898 of 2022

Bibhudatta Sarangi

....

Petitioner

Mr. Pravash Chandra Jena, Advocate

-versus-

Purnima Baliarsingh

....

Opp. Party

Mrs. Somaleen Pattanaik, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

19.04.2022

Order No.

IA No.4639 of 2022

2.
 1. This matter is taken up through hybrid mode.
 2. The IA has been filed for condonation of delay in filing the RPFAM.
 3. Since the matter has already been converted to Writ Petition (Civil) No. 8898 of 2022 and the Stamp Reporter has not pointed out any delay in filing the writ petition, no order need be passed in the IA.
 4. Accordingly, the IA is disposed of as infructuous.

(K.R. Mohapatra)
Judge

3. **W.P.(C) No. 8898 of 2022**

1. Petitioner in this writ petition prays for a direction to the learned Judge, Family Court, Khordha for early disposal of CP No.142 of 2018 filed by the Petitioner for restitution of conjugal right under Section 9 of the Hindu Marriage Act, 1955 (for short, 'the Act') and till its disposal, further proceedings of

C.P. No. 217 of 2018 filed by the Opposite Party should be stayed.

2. Mr. Jena, learned counsel for the Petitioner submits that the pleading in CP No.142 of 2018 is complete and there is no legal impediment for early disposal of said CP. Further, the Opposite Party has also filed C.P. No. 217 of 2018 for dissolution of marriage under Section 13(1) of the Act. The Petitioner had also filed an application for adjudication of C.P. No. 142 of 2018 prior to commencement of trial of C.P. No. 217 of 2018, which was dismissed by order dated 9th December, 2020. For the best interest of the parties, C.P. No. 142 of 2018 filed for restitution of conjugal rights should be disposed of at the earliest. He, therefore, prays for the aforesaid direction.

3. Mrs. Pattnaik, learned counsel for the Opposite Party objecting to the above, submitted that the Opposite Party has filed CP No.217 of 2018 for dissolution of marriage by a decree of divorce under Section 13(1) of the Act, which is pending before the said Court. Earlier, the Petitioner had filed a petition for disposal of CP No.142 of 2018 prior to CP No.217 of 2018, which was rejected vide order dated 9th December, 2020 (Annexure-8). The Petitioner did not challenge the same. Subsequently, the Opposite Party filed W.P.(C) No.4239 of 2022 seeking for a direction for early disposal of CP No.217 of 2018 filed by her. The said writ petition was disposed of vide order dated 15th February, 2022 with a direction that in the event, the Petitioner (Opposite Party herein) makes an application for early disposal of CP No.217 of 2018 pending before learned Judge, Family Court, Khordha within a period of two weeks stating the grounds therein, learned Judge, Family

Court shall do well to consider such application in accordance with law, as expeditiously as possible, preferably within a period of four weeks there from and proceed with the C.P. accordingly. Although an application for early disposal of CP No.217 of 2018 in obedience to the direction of this Court has already been filed, but due to non-cooperation of the present Petitioner, the said application is still pending for consideration. Instead of cooperating for disposal of the petition filed for early disposal of CP No.217 of 2018, this writ petition has been filed for the aforesaid relief. The only intention of the Petitioner is to circumvent the order dated 9th December, 2020 passed by learned Judge, Family Court, Khordha in CP No.142 of 2018. Thus, the writ petition merits no consideration and is liable to be dismissed.

4. Taking into consideration the rival contentions of the parties and on perusal of the record, it is apparent that earlier W.P.(C) No.4239 of 2022 for early disposal of CP No.217 of 2018 was disposed of with a direction that in the event Opposite Party herein files an application for early disposal of the CP, such application shall be considered within a period of four weeks. It is the submission of Mrs. Pattnaik, learned counsel for the Opposite Party that although such an application has been filed, but due to non-cooperation of the Petitioner herein the same could not be considered as yet. However, the Petitioner has filed this writ petition for a direction to learned Judge, Family Court, Khordha for early disposal of CP No.142 of 2018 filed by him.

5. Taking into consideration the facts and circumstances of the case, this Court feels that the Petitioner herein deserves a

similar relief as that in W.P.(C) No.4239 of 2022. But, the parties should cooperate with learned Judge, Family Court, Khordha for early disposal of the petition filed pursuant to order dated 15th February, 2022 in W.P.(C) No.4239 of 2022.

6. In view of the above, this Court disposes of the writ petition with a direction that in the event Petitioner files an application for early disposal of CP No.142 of 2018 stating the grounds therein, learned Judge, Family Court, Khordha shall do well to consider such application in accordance with law as expeditiously as possible, preferably within a period of four weeks giving opportunity of hearing to the parties concerned subject to condition that Petitioner shall cooperate with learned Judge, Family Court, Khordha for early disposal of the petition filed pursuant to order dated 15th February, 2022 in W.P.(C) No.4239 of 2022. While deciding the matter, learned Judge, Family Court, Khordha will be at liberty to take coercive measure, if any, if the parties fail to cooperate for early disposal of the litigation.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

s.s.satapathy