

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 10384 OF 2022

Sumitra Manik

....

Petitioner

Mr. Bibekananda Bhuyan, Advocate

-versus-

Devi Prasad Manik

....

Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

27.04.2022

Order No.

1. This matter is taken up through hybrid mode.
2. This writ petition has been filed assailing the order dated 6th April, 2022 passed by learned Judge, Family Court, Bhubaneswar in C.P. No. 268 of 2017, whereby he rejected an application filed by the Petitioner under Order VI Rule 17 C.P.C. for amendment of the written statement.
3. Mr. Bhuyan, learned counsel for the Petitioner submits that after closure of the evidence of the Opposite Party (Petitioner in the Civil Proceeding), the Opposite Party conducted a second marriage on 4th May, 2021. When the said fact came to the notice of the Petitioner, she filed I.C.C. Case No. 5018 of 2021 before learned Sub-divisional Judicial Magistrate, Bhubaneswar, which was forwarded to Mahila Police Station, Bhubaneswar under Section 156(3) Cr.P.C. Accordingly, F.I.R. was registered and charge-sheet has already been submitted on 31st December, 2021 under Sections 494/498-A/34 I.P.C. in C.T. No. 6837 of 2021. The Petitioner thereafter filed an application for amendment of the written statement to incorporate the aforesaid subsequent events in

her written statement. Learned Judge, Family Court, Bhubaneswar, without considering the relevancy of such amendment for adjudication of the case, rejected the application vide order dated 6th April, 2022. Hence, this writ petition has been filed.

4. Mr. Bhuyan, learned counsel for the Petitioner strenuously argued that amendment is imperative for determining the real matter in controversy. The amendment sought for will establish the conduct of Opposite Party. Further, there is due diligence on the part of the Petitioner in filing such application, as immediately after submission of the charge-sheet in C.T. Case No. 6837 of 2021 petition for amendment was filed. These material aspects were not taken into consideration by learned Judge, Family Court, Bhubaneswar while adjudicating the petition under Order VI Rule 17 C.P.C. Hence, the impugned order is not sustainable and is liable to be set aside.

5. Upon hearing learned counsel for the Petitioner and on perusal of the record, it is clear that the application for amendment was filed on 5th April, 2022, when the matter was posted for recording of evidence on behalf of the Petitioner. The Petitioner had knowledge about the alleged second marriage of Opposite Party at least from the date of filing of the complaint petition, i.e., on 3rd November, 2021. Further, it appears that charge-sheet was submitted on 31st December, 2021. It is not known as to why the Petitioner took almost four months thereafter to file an application for amendment of the written statement. Relevancy of the amendment sought to be incorporated in the written statement is also not clear from the averments made in the petition for

amendment under Annexure-6. From the submission of learned counsel for the Petitioner, it is also not clear as to how the allegation of second marriage of the Opposite Party will help the Petitioner in substantiating her case in the civil proceeding. The Petitioner has only stated in paragraph-3 of the petition for amendment that “..... *Rather it will help the Hon’ble court for properly deciding the issues among the parties. So, the amendment is much needed for proper adjudication of this case.*” The aforesaid statement does not disclose the relevancy of the amendment sought to be incorporated in the written statement. Admittedly, the evidence of Opposite Party has been closed since 3rd January, 2020 on the basis of the pleadings and materials available on record. The Court has to take a decision in the matter depending upon the pleadings and materials produced before it. Although Section 23-A of the Hindi Marriage Act, 1955 provides for relief to the respondent in divorce or other proceedings, but that itself will not entitle the party for the relief of amendment, unless he/she makes out a case for the same. No such ground is made out by the Petitioner (respondent in the Civil Proceeding) for allowing an application for amendment.

6. In view of the above, this Court is not in a position to accept the submission of Mr. Bhuyan, learned counsel for the Petitioner. There is also no infirmity in the impugned order.

7. Accordingly, the writ petition is dismissed.

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

(K.R. Mohapatra)
Judge