

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.13833 of 2021

Meenakshi Parida

..... Petitioner

Mr. Suvashish Pattanaik, Advocate

-versus-

Sujit Kumar Sahu

.... Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

05.09.2022

Order No.

2. 1. This matter is taken up through Hybrid mode.
2. 2. Petitioner in this writ petition seeks to assail the judgment and order dated 2nd March, 2021 (Annexure-4) passed by learned Judge, Family Court, Bhubaneswar in CMA No.50 of 2020 (arising out of CP No.720 of 2019), thereby dismissing an application under Section 152 CPC to correct the typographical error in para-5 of the judgment.
3. 3. Although Office note discloses that service of notice on the sole Opposite Party is sufficient, none appears on his behalf.
4. 4. It is submitted by learned counsel for the Petitioner that both the parties filed CP No.720 of 2019 under Section 28 of the Special Marriage Act, 1954 to dissolve their marriage by passing a decree of divorce. By judgment and decree dated 3rd September, 2020, the marriage between the parties was dissolved. However, in para-5 of the judgment, an inadvertent error crept in, which causes serious prejudices to the present Petitioner. It is his submission that in para-7 of the petition filed

jointly by the parties under Section 28 of the Special Marriage Act, 1954, the parties have pleaded as under:-

“7. That, although the petitioners have married with each other since 2009 and stayed together at Bangalore from October 2011 under one roof as husband and wife but they have not consummated any conjugal life with each other till 01-04-2017 for which there was no issue.”

Although it is specifically averred by the parties that they have not consummated any conjugal life till 1st April, 2017, but it has been inadvertently mention in para-5 of the impugned judgment that ‘.....they have no conjugal relationship since 02.04.2017 and there is no chance of reunion among them....’ Hence, the word ‘since’ is to be replaced by ‘till’. It is his submission that admittedly after 2nd April, 2017 the parties are living separately. This material aspect was not properly considered by learned Judge, Family Court, Bhubaneswarm who by misconstruing that the Petitioner by filing an application under Section 152 CPC is essentially seeking review of the judgment passed in the CP, rejected the same. Hence, this writ petition has been filed.

5. Considering the submission made by learned counsel for the Petitioner and on perusal of the petition filed under Section 28 of the Special Marriage Act, 1954 annexed as Annexure-1 to the writ petition, it is crystal clear that at para-7 of the same, parties have pleaded that their marriage was not consummated till 1st April, 2017 and thereafter they are living separately. Thus, the word ‘since’ is inappropriately placed in para-5 of the judgment impugned herein and it should be replaced by the word ‘till’.

6. Accordingly, the writ petition is allowed and learned Judge, Family Court, Bhubaneswar is directed to correct the judgment by substituting the word '*till*' in place of '*since*' in sentence, viz., '*The evidence of both the parties further indicates that they have no conjugal relationship since 02.04.2017 and there is no chance of reunion among them.*'

7. On production of certified copy of this order, necessary correction in the impugned judgment and order dated 3rd September, 2020, as aforesaid, shall be carried out forthwith.

Issue urgent certified copy of this order on proper application.

(K.R. Mohapatra)
Judge

