

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.11508 OF 2022

Sarah Sharma

Petitioner

Mr. Yeeshan Mohanty, Senior Advocate
along with Mr. Rakesh Sahu, Advocate

-versus-

Parameswaran B

.... ***Opp. Party***

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
08.07.2022**

Order No.

3. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition seeks to assail the order dated 24th February, 2022 passed in C.P. No. 70 of 2018, whereby learned Judge, Family Court, Sambalpur rejected an application filed by the Petitioner to refer the matter to the Mediation Centre, Sambalpur for conciliation.
3. Mr. Mohanty, learned Senior Advocate appearing for the Petitioner submits that the Petitioner had earlier moved this Court in W.P.(C) No. 17467 of 2021 assailing the order of rejection of an application for amendment. This Court by order dated 24th December, 2021 disposed of the writ petition with the following direction:-

“4. This writ petition is disposed of with direction upon the Family Court to prevail upon the parties for conciliation, to be together, if possible. Court is confident that conciliation will succeed. In event, it does not, the Family Court may proceed with adjudication on the basis of wife’s petition not carrying a prayer.

5. Based on impression of Court as aforesaid and for ends of justice, impugned order is set aside. The Family Court

will reconsider the amendment application, in event parties fail to reconcile.”

4. Pursuant to the direction of this Court, the Petitioner filed an application to refer the matter to the Mediation Centre, Sambalpur for conciliation. The petition was also taken up for hearing on different dates. But, learned Family Court without considering the intent and object of the order passed by this Court, rejected the petition. Hence, this writ application has been filed.

5. Section 89 to the Code of Civil Procedure (for convenience referred to as ‘the Code’) provides different Alternative Dispute Redressal (ADR) methods for resolution of the dispute outside Court, one of those being resolution of dispute by conciliation. Conciliation is made to facilitate the parties to resolve their dispute with the assistance of the Conciliator. Learned Judge, Family Court, Sambalpur, without considering the purpose for which Section 89 has been introduced in the Code, proceeded to adjudicate the matter like an ordinary petition filed in a judicial forum and rejected the petition observing that since the date of separation among the parties, there was series of conciliations among them but in vain. It is also observed *inter alia* that both the parties being higher public servants like IAS and IPS, working in the higher posts of the State, know their responsibility and duty towards each other as well as their necessity for the State. It is also observed that the Respondent-husband does not agree and willing for reunion.

6. It is the submission of Mr. Mohanty, learned Senior Advocate that although there is an objection on the part of Opposite Party-husband for reconciliation, but the Court, for the

best interest of parties and to resolve the dispute for good can refer the matter to the Mediation Centre either for mediation or conciliation. It is his submission that in order to refer the matter to the Mediation Centre, no consent of the parties is required. In support of his contention, he relied upon the decision in the case of *Afcons Infrastructure Limited and another –v- Cherian Varkey Construction Company Private Limited and others*, (2010) 8 SCC 24. He also relied upon the decision in the case of *Amalapoo Mary and others –v- V. Ravindra and others*, in Writ Petition No. 51491 of 2016 (GM-CPC) of the High Court of Karnataka. He also relied upon the decision in the case of *Bhavana Ramaprasad –v- Yadunandan Parthasarathy*, reported in AIR 2015 Kan. 6. It is his submission that the Court has ample power to refer the matter for mediation though not for conciliation.

7. Taking into consideration the submission made by learned counsel for the Petitioner and on perusal of the case record as well as the case laws cited, it is apparent that the petition was filed to refer the matter to the Mediation Centre, Sambalpur for conciliation, which was filed pursuant to the aforesaid direction of this Court in W.P.(C) No. 17467 of 2021. It is further revealed that learned Family Court, in terms of direction of this Court, took up conciliation in his Chambers on different dates. Learned Family Court also explained in detail the attempt made by it and the demeanor of the parties during conciliation. From a close reading of the impugned order, it is apparent that the Opposite Party is not at all interested for conciliation. When the Petitioner prayed for an adjournment for further conciliation, the Opposite

Party objected to the same and prayed to close the conciliation. However, in view of the direction of this Court, learned Family Court took up conciliation for reunion of the parties on adjourned dates. But the Opposite Party insisted upon dissolution of marriage. Hence, the endeavour of learned Family Court could not be successful.

8. Paragraph-44 of the judgment in *Afcons Infrastructure Limited* (supra) reads as follows:

“44. The court should also bear in mind the following consequential aspects, while giving effect to Section 89 of the Code:

(i) If the reference is to arbitration or conciliation, the court has to record that the reference is by mutual consent. Nothing further need be stated in the order-sheet.

(ii) If the reference is to any other ADR process, the court should briefly record that having regard to the nature of dispute, the case deserves to be referred to Lok Adalat, or mediation or judicial settlement, as the case may be. There is no need for an elaborate order for making the reference.

(iii) The requirement in Section 89(1) that the court should formulate or reformulate the terms of settlement would only mean that the court has to briefly refer to the nature of dispute and decide upon the appropriate ADR process.

(iv) If the Judge in charge of the case assists the parties and if settlement negotiations fail, he should not deal with the adjudication of the matter, to avoid apprehensions of bias and prejudice. It is therefore advisable to refer cases proposed for judicial settlement to another Judge.

(v) If the court refers the matter to an ADR process (other than arbitration), it should keep track of the matter by fixing a hearing date for the ADR report. The period allotted for the ADR process can normally vary from a week to two months (which may be extended in exceptional cases, depending upon the availability of the alternative forum, the nature of case, etc.). Under no circumstances the court should allow the ADR process to become a tool in the hands of an unscrupulous litigant intent upon dragging on the proceedings.

(vi) Normally the court should not send the original record of the case when referring the matter to an ADR

forum. It should make available only copies of relevant papers to the ADR forum. (For this purpose, when pleadings are filed the court may insist upon filing of an extra copy). However if the case is referred to a court annexed mediation centre which is under the exclusive control and supervision of a judicial officer, the original file may be made available wherever necessary.”

9. In view of the law laid down by the Hon’ble Supreme Court, if a reference is to be made for arbitration or conciliation, the Court has to record that the reference is by mutual consent. In the instant case, the Opposite Party-husband has no consent to refer the matter for conciliation. Hence, I find no infirmity in the impugned order in refusing the prayer made by the Petitioner.

10. It is, however, made clear that this order does not preclude either of the parties to the civil proceeding to resolve their dispute through any other alternative method.

11. This writ petition is accordingly disposed of.

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

(K.R. Mohapatra)
Judge

bks