

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.3074 OF 2016

Susama Parhi @ Behera

Petitioner

Mr. Biswajit Nayak, Advocate

-versus-

Arun Kumar Parhi

.... Opp. Party

Mr. A.C. Panda, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

07.07.2022

Order No.

- 8.
1. This matter is taken up through hybrid mode.
 2. The Petitioner in this writ petition seeks to assail the order dated 2nd September, 2015 (Annexure-4) passed in Civil Proceeding No.174 of 2011, whereby learned Judge, Family Court, Rourkela rejected an application under Order VI Rule 16 C.P.C filed by the Petitioner.
 3. Mr. Nayak, learned counsel for the Petitioner submits that the Opposite Party has filed Civil Proceeding No.174 of 2011 under Section 13(1)(i) of the Hindu Marriage Act, 1955 for dissolution of marriage by passing a decree of divorce. Along with other allegation against the present Petitioner, the Opposite Party-Husband has made the following allegation at Paragraphs-15 and 16 of the said petition for divorce;

“15. That, the official accommodation No.F/76 at NIT Campus, Rourkela-8, where the Respondent resided alone by driving the Petitioner, got a free hand, after the above Court order to use it in any manner she liked. Many unknown persons including one Iswar Bhanja become a regular visitor to that house.

On 03.06.11 while the Petitioner had been to that quarter, his Motor bike bearing No.OR-14S/6894, on gold ring, gold locket were forcefully taken away by the Respondent and that Bhanja. Both of them also forcefully obtained a cheque for an amount of Rs.15,000/-. Then again on 30.06.2011 all on a sudden that Bhanja came across the Petitioner in a Petrol Pump at Sector-19, Rourkela. He forcefully took away the Petitioner in his Scooter to Sector-7 and obtained a writing from him on indebtedness to the tune of Rs.40,000/- to the Respondent. To avoid unpleasantness social humiliation, the Petitioner did not inform Police.

16. That, it is submitted that after the order of judicial separation, there has been no resumption of cohabitation between the parties since such order is passed on 8.9.2008. Due to such long dispute, cruelty meted to the Petitioner by the Respondent and long separation due to litigation, more so due to non-separation of cohabitation after 8.9.2008, the relationship between both the parties has come to an irretrievable break down and there is absolutely no chance of their reunion."

Since the allegation made against the Petitioner was unnecessary, frivolous and scandalous, the Petitioner filed an application under Order VI Rule 16 C.P.C. under Annexure-2 to strike out the aforesaid pleadings from the petition for divorce. Learned Judge, Family Court, Rourkela without considering the matter in its proper perspective, rejected the same against which the writ petition has been filed.

4. Mr. Nayak, learned counsel for the Petitioner further submits that the allegations so made in the aforesaid paragraphs clearly indicate that the Opposite Party has questioned the chastity and character of the present Petitioner without impleading the person, namely, Iswar Bhanja, as a party to the proceeding. It is his submission that there is no

basis to make such allegation and the same is not necessary for just adjudication of the civil proceeding. Hence, he prays for setting aside the impugned order and to strike out the allegations made in Paragraphs-15 and 16 of the petition for divorce.

5. Mr. Panda, learned counsel for the sole Opposite Party submits that the allegation made in the aforesaid paragraphs does not touch the chastity of the present Petitioner. The Opposite Party has only indicated some instances to show the manner in which the Opposite Party is being treated by the Petitioner. The aforesaid averments/pleadings are necessary for just adjudication of the case. Since no allegation of adultery or illicit relationship of the Petitioner with the said Iswar Bhanja is made, he is neither a necessary nor a proper party to the proceeding. The allegations made in Paragraphs-15 and 16 are subject to proof by leading cogent evidence by the present Opposite Party. Learned Judge, Family Court considering the matter from its proper perspective has passed the impugned order under Annexure-4, which needs no interference.

6. Taking into consideration the rival contentions of the parties and on perusal of the record, it appears that no allegation touching the chastity and character of the Petitioner has been made by the Opposite Party in Paragraphs-15 and 16 of the petition for divorce. There is also no allegation of adultery or illicit relationship of the Petitioner with Iswar Bhanja in the aforesaid paragraphs. On perusal of Annexure-2, the petition filed under Order VI Rule 16 C.P.C. by the

Petitioner, it does not disclose any cogent reason to strike out the aforesaid pleadings. The Petitioner in the said petition has stated that the allegation that Iswar Bhanja became the regular visitor to the house of the Petitioner and said Iswar Bhanja along with the Petitioner had taken gold and valuables from the Opposite Party, are false and baseless. It is further stated that in the evidence recorded in C.M.A. No.43 of 2011, the Opposite Party (Husband) stated that Iswar Bhanja is the boyfriend of the Petitioner (Wife) but he has not been made a party to either in C.M.A. No.43 of 2011 or in the present proceeding for which the pleadings made in Paragraphs-15 and 16 of the petition are baseless and unnecessary. The averments made in the petition under Order VI Rule 16 C.P.C., as stated above, cannot form a ground to strike out the pleadings made in the aforesaid paragraphs. The Opposite Party by making such averments in the petition for divorce has stated some instances/incidents occurred on different dates. The allegation made in the said petition is required to be proved by leading cogent evidence by the Opposite Party. Therefore, the ground taken in the petition under Order VI Rule 16 C.P.C. cannot form basis for striking out the pleadings made in Paragraphs-15 and 16 of the Petition for divorce. In that view of the matter, I find no infirmity in the impugned order under Annexure-4.

7. Since the civil proceeding is of the year 2011, learned Judge, Family Court, Rourkela shall make an endeavour to dispose of the same expeditiously.

8. Accordingly, the writ petition being devoid of any merit stands dismissed.

9. The Interim order dated 3rd March, 2016 passed in Misc. Case No.2909 of 2016 stands vacated.

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

(K.R. Mohapatra)
Judge



ms