

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 12275 OF 2022

Dr. Anil Kumar Sahoo **Petitioner**
Mr. Kailash Chandra Kar, Advocate
-versus-

Chinmayee Sahoo **Opp. Party**
Mr. Sailesh Das, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
20.09.2022

Order No.

5. 1. This matter is taken up through hybrid mode.
2. Order dated 4th April, 2022 (Annexure-1) passed by learned Judge, Family Court, Cuttack in C.P. No.459 of 2015 is under challenge in this writ petition, wherein the written statement filed by the Opposite Party is accepted and the matter was posted to 2nd May, 2022 for evidence of the Opposite Party.
3. Mr. Kar, learned counsel for the Petitioner submits that earlier the Petitioner assailing the order dated 29th October, 2021 passed by learned Judge, Family Court, Cuttack in the aforesaid civil proceeding had approached this Court in W.P.(C) No.35819 of 2021, whereby learned Judge, Family Court posted the matter for evidence of the Opposite Party, when she is precluded from filing of the written statement vide order dated 21st January, 2017. This Court disposed of the writ petition vide order dated 1st December, 2021 directing as under:

“3. Court does not think it is necessary to issue notice. It is well settled that there cannot be any evidence not based on pleadings. Written

statement not having been filed by opposite party and she precluded from filing the same, does not allow her to adduce or lead evidence. All that she can do is cross-examine plaintiff's witness or witnesses. Mr. Kar submits, his client's evidence was closed.

4. The Court below is directed to forthwith pronounce judgment on consideration of pleadings, evidence and argument, to be made before it, as mandated in the procedure provided under rule 10 in order VIII."

4. It is submitted by learned counsel for the Petitioner that the order of this Court was produced before learned Judge, Family Court on 18th December, 2021. In spite of the same, learned Judge, Family Court in its order dated 4th April, 2022 accepted the written statement filed by Opposite Party and permitted her to lead evidence. He, therefore, submits that in essence, learned Judge, Family Court has committed contempt of this Court. Since this Court disposed of the writ petition with a direction to pronounce the judgment by taking into consideration the pleadings, evidence and materials available on record, there is no scope for the learned Judge, Family Court to accept the written statement and posted the matter for evidence from the side of the Opposite Party. He, therefore, prays for setting aside the impugned order and to direct the learned Judge, Family Court to pronounce the judgment at once.

5. Mr. Das, learned counsel for the Opposite Party submits that although the written statement was filed earlier on 30th August, 2019 along with a petition for acceptance of the same, but the matter was inadvertently posted for evidence. It,

therefore, proceeded with the matter for accepting the written statement filed by the Opposite Party and passed the impugned order. It is his submission that earlier the writ petition in W.P.(C) No.35819 of 2021 was filed suppressing material fact. Said writ petition was also disposed of without issuing notice to the Opposite Party. Hence, the Opposite Party had filed W.A. No.83 of 2022 assailing the order dated 1st December, 2021 passed in W.P.(C) No.35819 of 2021. It is submitted that while disposing of the Writ Appeal as withdrawn, the Division Bench of this Court has observed as under:

“5. At the time of hearing, counsel for the Petitioner prays for permission to withdraw the present writ appeal as the Family Court by subsequently order dated 4th April, 2022 has permitted the Appellant-Wife to place on record the written statement.

6. In view of the above, the writ appeal is dismissed as withdrawn.”

In view of the above, Mr. Das, learned counsel for the Opposite Party submits that learned Judge, Family Court has committed no error in passing the impugned order under Annexure-1.

6. Taking into consideration the rival contentions of the parties and the materials placed, this Court is of the considered opinion that the order dated 1st December, 2021 passed in W.P.(C) No.35819 of 2021 although challenged in Writ Appeal No.83 of 2022, but the same was permitted to be dismissed as withdrawn on the submission of learned counsel for the Appellant (Opposite Party herein). Thus, it appears that the order dated 1st December, 2021 passed by the writ Court is not

varied/modified. However, the order dated 4th April, 2022 was passed at that juncture when the writ appeal was not disposed of. Further, it appears that the writ appeal was dismissed as withdrawn. In that view of the matter, learned Judge, Family Court has committed judicial impropriety in accepting the written statement filed by the Opposite Party and posting the matter for her evidence. In view of the discussion made above, the impugned order under Annexure-1 is not sustainable and is hereby set aside.

7. Learned Judge, Family Court, Cuttack is directed to act upon the order dated 1st December, 2021 passed in W.P.(C) No.35819 of 2021, if it is not varied/modified in the meantime.

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

(K.R. Mohapatra)
Judge

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