

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) NO.14926 OF 2022

Madhusmita Behera **Petitioner**
Mr. Gopal Krishna Behera, Advocate

-versus-

Anup Kumar Choudhury **Opp. Party**
Ms. Smita Das, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

Order No. **24.08.2022**

03. 1. This matter is taken up through hybrid mode.
2. Order dated 13th May, 2022 (Annexure-1) passed by learned Judge, Family Court, Angul in C.P. No. 14 of 2020 is under challenge in this writ petition, whereby an application under Order VI Rule 17 C.P.C. filed by Opposite Party was allowed.
3. Mr. Behera, learned counsel for the Petitioner submits that the Opposite Party had earlier approached this Court assailing the order of rejection of his petition filed under Order VI Rule 17 C.P.C. in W.P.(C) No. 36336 of 2021, which was disposed of vide order dated 23rd March, 2022 with the following direction:

“In view of the discussion made above, this Court is of the considered opinion that the impugned order dated 2nd November, 2011 passed by learned Judge, Family Court, Angul in C.P. No.14 of 2020 is not sustainable in the eyes of law and is accordingly set aside. The matter is remitted back to learned Judge, Family Court, Angul to consider the application under Order VI Rule 17 C.P.C. on its own merit by providing adequate opportunity of hearing to the parties concerned.”

4. Pursuant to the said direction, the petition under Order VI Rule 17 C.P.C. filed by Opposite Party for amendment of the

petition under Section 13(1) of the Hindu Marriage Act, 1955 (for short 'the Act') was considered afresh and the impugned order has been passed. Although this Court while disposing of the earlier writ petition had specifically observed that while adjudicating a petition under Order VI Rule 17 C.P.C., the Court should not go into the merits of the proposed amendment but certainly the Court is required to see as to whether the proposed amendment is essential for just adjudication of the case or not, but learned Judge, Family Court, Angul again committed the same mistake without recording any finding as to whether the amendment sought for is essential for just adjudication of the case or not. Further, no reason has been assigned for allowing such amendment. By virtue of amendment sought for, the Opposite Party is trying to change the nature and character of the petition itself by taking a plea of adultery of the present Petitioner in the said petition. Thus, the impugned order being an unreasonable one and not in consonance with the direction of this Court is liable to be set aside.

5. Ms. Das, learned counsel for the Opposite Party objecting to the same submitted that the amendment sought for is highly essential for just adjudication of the case. The amendment sought for was not within the knowledge of Opposite Party at the time of filing of the petition under Section 13 (1) of the Act. As such, learned trial Court in order to avoid multiplicity of litigation has held that the proposed amendment is essential for just and proper adjudication of the case. She, therefore, prays for dismissal of the writ petition.

6. Taking into consideration the submissions made by learned counsel for the parties and on perusal of the materials on record, it appears that learned Judge, Family Court, Angul has not discussed about the proposed amendment sought to be incorporated in the petition under Section 13(1) of the Act in spite of observation of this Court to the effect that the Court should see as to whether the proposed amendment is essential for just and proper adjudication of the case. It, however, held that the proposed amendment is essential for just and proper adjudication of the case without assigning any reason thereto.

7. In that view of the matter, the impugned order is not sustainable in the eyes of law and the same is accordingly set aside. The matter is remitted back to the learned Judge, Family Court, Angul to adjudicate the petition afresh by discussing as to whether the amendment sought for is essential for just adjudication of the case or not.

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

(K.R. Mohapatra)
Judge

bks