

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 15772 OF 2022

Priyambada Sahoo

.... Petitioner

Mr. Digambar Sethi, Advocate

-versus-

Priyadarshi Biswal and another

.... Opp. Parties

Mr. Susanta Sekhar Parida, Advocate

(For Opp. Party No.2)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

14.10.2022

Order No.

2.
 1. This matter is taken up through hybrid mode.
 2. The Petitioner in this writ petition seeks to assail the correctness of the order dated 22nd June, 2022 (Annexure-8) passed by learned Judge, Family Court, Keonjhar in C.P. No.93/143 of 2021-20, whereby an application under Order XVIII Rule 17 C.P.C. to recall P.Ws 1 and 2 was rejected.
 3. Mr. Sethi, learned counsel for the Petitioner submits that during pendency of the civil proceeding under Section 13 of the Hindu Marriage Act, 1955, the Opposite Party No.1 filed application to send nine articles to SFSL, Rasulgarh. The said application was allowed vide order dated 29th April, 2022 and the matter was posted to 27th June, 2022 awaiting report of SFSL. In the meantime, the report of SFSL has been received. The Petitioner, however, had filed TRP(C) No.186 of 2021 before this Court for transfer of the aforesaid civil proceeding. While entertaining the application under Section 24 C.P.C. in

TRP(C) No.186 of 2021, this Court vide order dated 2nd July, 2021 directed to transfer C.P. No.143 of 2020 from the Family Court, Rourkela to Family Court, Keonjhar and further directed to dispose of said civil proceeding within a period of nine months. However, the Opposite Party No.1 subsequently filed I.A. No.134 of 2022 for extension of time for disposal of the civil proceeding. The said I.A. was disposed of on 12th May, 2022 by this Court directing disposal of C.P. No.143 of 2020 within a period of two months without allowing any adjournment to either of the parties. Upon receipt of that order, learned Judge, Family Court, Keonjhar preponed the matter to 18th May, 2022 vide its order dated 13th May, 2022 intimating learned counsel appearing for the parties. When the matter was taken up on 18th May, 2022, learned counsel appearing for the Petitioner filed an application for adjournment on the ground that he could not intimate the Petitioner about the preponing of the date of hearing. Entertaining such application, the matter was posted to 19th May, 2022 on which date the Opposite Party No.1 filed his evidence in affidavit. As learned counsel for the present Petitioner was not in a position to cross-examine the witnesses of Opposite Party No.1 in absence of any specific instruction from the Petitioner, evidence from the side of the Opposite Party No.1 was closed. As the Petitioner did not get any opportunity to cross-examine P.Ws. 1 and 2, she filed an application under Order XVIII Rule 17 C.P.C. to recall P.Ws. 1 and 2 for cross-examination. The said application was taken up on 22nd June, 2022. Learned Judge, Family Court, Keonjhar

observing that the Petitioner was given opportunity to cross-examine P.Ws.1 and 2 refused to entertain the application. Hence, this writ petition has been filed.

4. Mr. Sethi, learned counsel for the Petitioner submits that in view of the facts and circumstances, as stated above, the Petitioner did not get any reasonable opportunity to cross-examine P.Ws.1 and 2. This aspect was lost sight of by learned Judge, Family Court, Keonjhar while entertaining the application under Order XVIII Rule 17 C.P.C.. He, therefore, submits that the impugned order under Annexure-8 being contrary to law and violative of the principles of natural justice is liable to be set aside.

5. Although notice on Opposite Party no.1 is duly served, none appears on his behalf.

6. Opposite Party No.2 is represented by Mr. Parida, learned counsel, who supports the plea of the Petitioner.

7. Taking into consideration the submissions made by learned counsel for the parties present in Court and on perusal of the record, it appears that in the petition for adjournment filed on 18th May, 2022, the Petitioner has specifically taken a plea that learned counsel appearing on behalf of the Petitioner could not intimate her about the preponing of posting of civil proceeding, as she is residing in remote village. The petition under Order XVIII Rule 17 C.P.C. was also filed on the same ground stating that the Petitioner did not get any reasonable opportunity to cross-examine P.Ws.1 and 2. Learned Judge, Family Court, Keonjhar while entertaining the application lost

sight of the aforesaid material aspects and proceeded with the matter probably due to the direction made by this Court in I.A. No.134 of 2022 (arising out of TRP(C) No.186 of 2021). Compliance of natural justice is paramount consideration in adjudicating the matter. In the instant case, facts and circumstance stated above clearly disclose that the Petitioner did not get any opportunity to cross-examine P.Ws.1 and 2.

8. In view of the above, the impugned order under Annexure-8 is not sustainable and is accordingly set aside. The matter is remitted back to learned Judge, Family Court, Keonjhar with a direction to recall P.Ws.1 and 2 and provide opportunity to the Petitioner to cross-examine them.

9. In order to avoid further delay in the matter, the Petitioner is directed to appear before learned Judge, Family Court, Keonjhar on 26th October, 2022 along with certified copy of this order to receive further instruction in the matter.

10. Parties are directed to cooperate with learned Judge, Family Court, Keonjhar for early disposal of the civil proceeding. It is also directed that unnecessary adjournment shall not be granted to any of the parties to the proceeding.

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

(K.R. Mohapatra)
Judge