

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 18223 of 2022

Dillip Kumar Mallick

..... Petitioner

Mr. Suwendu Kar, Advocate

-versus-

Banita Mallick

.... Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

08.08.2022

Order No.

1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition seeks to assail the order dated 19th April, 2022 (Annexure-9) passed by learned Judge, Family Court, Kendrapara in CP No.53 of 2016, whereby an application filed by the Petitioner under Order VI Rule 17 CPC has been rejected.
3. It is submitted by Mr. Kar, learned counsel for the Petitioner that CP No.53 of 2016/ CP No.110 of 2015 has been filed by the Petitioner for dissolution of marriage between the Petitioner and the Opposite Party on the grounds of cruelty and desertion on the part of the Opposite Party. In course of examination of witness on behalf of the Petitioner, the sister of the Opposite Party, namely, Mamata Samal was examined as PW-3, who deposed that the Opposite Party is living in adultery and is staying with her husband. Knowing the aforesaid fact, the Petitioner filed an application under Order VI Rule 17 CPC to amend the pleadings in the petition under Section 13(1) of the Hindu Marriage Act, 1955 (for

brevity called 'the Act') by incorporating the ground of adultery and by impleading paramour of the Opposite Party, namely, Manoj Kumar Samal as a party to the Civil Proceeding. The said petition was rejected on the ground that the fact was known to the Petitioner prior to filing of the civil proceeding. It is submitted by Mr. Kar, learned counsel for the Petitioner that the fact of adultery was not known to the Petitioner prior to recording of deposition of PW-3. Initially, she was not cited as a witness on behalf the Petitioner. She was allowed to depose on behalf of the Petitioner as she volunteered. Adultery can be considered as a ground for divorce. When the said fact came to his knowledge, the Petitioner filed an application for amendment of the pleading. In the facts and circumstances of the case, learned Judge, Family Court, Kendrapara ought to have considered the application for amendment favourably and allowed the same. He, therefore, prays for setting aside of the impugned order under Annexure-9 and to allow the amendment sought for by the Petitioner.

4. Taking into consideration the submission made by learned counsel for the Petitioner and on perusal of record, it appears that Civil Proceeding was initially filed before learned Judge, Family Court, Jajpur and subsequently it has been transferred to learned Judge, Family Court, Kendrapara and is pending for adjudication. PW-3, as stated was not cited as a witness to be examined on behalf of the Petitioner. However, she volunteered to lead evidence on behalf of the Petitioner and stated that the Opposite Party is living in adultery with her husband, namely, Manoj Kumar Samal.

5. The Petitioner filed CP for dissolution of marriage on the ground of cruelty and desertion. There can be no confusion that ground of adultery can be considered for passing a decree of dissolution of marriage. In the instant case, PW-3, who stated to have volunteered to lead evidence on behalf of the Petitioner, was accordingly allowed by the Petitioner. In her evidence, she has stated that the Opposite Party is living in adultery with her (PW-3's) husband. It appears that PW-3 was not summoned by the Court to lead evidence. She was produced by the Petitioner to lead evidence in the matter, obviously to lead evidence in his support. Thus, it can be reasonably presumed that the Petitioner had knowledge about the statement she (PW-3) would make before the Court. Allegation of adultery is serious in nature. It should not be allowed to be introduced as a ground by way of amendment on a stray statement made by a witness, when there is no foundation to the pleadings in the petition for dissolution of marriage. In view of the discussions made above, it will not be safe to allow the petition to incorporate the ground of adultery at the belated stage, i.e., after commencement of hearing of the Civil Proceeding. It appears that learned Judge, Family Court has dealt with in detail with the materials available on record while passing the impugned order, which is also a reasoned one. Therefore, this Court finds no infirmity in the order impugned herein.

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

(K.R. Mohapatra)
Judge