

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 21954 OF 2022

Bijay Kumar Sethi *Petitioner*
Mr. Samir Kumar Mishra, Advocate
-versus-
Sita Sethi *Opp. Party*

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

07.09.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition prays for a direction to set aside the order dated 16th August, 2022 (Annexure-5) passed by learned Judge, Family Court, Bhadrak in Gua. Misc. Case No.16 of 2021, whereby he allowed an application dated 18th July, 2022 filed by the Opposite Party to contest the proceeding by filing written statement.
3. Mr. Mishra, learned counsel for the Petitioner submits that marriage between the Petitioner and Laxmi Sethi was solemnized on 9th May, 2018 as per Hindu Customs and Rites and they were blessed with a daughter, namely, Ritika Sethi, on 23rd February, 2019. But, unfortunately the wife of the Petitioner, namely, Laxmi Sethi, breathed her last on 23rd March, 2020. Before death of the wife of the Petitioner, the child was staying with her maternal grandparents as the wife of the Petitioner was being treated in Hospital. The Opposite Party is the maternal grandmother of the minor child. Since the child has become more than three years old, the Petitioner filed an

application for a direction to the maternal grandparents to handover the custody of the child to him, so that he can look after her, which was refused. As such, the Petitioner finding no other alternative has filed C.P. No.16 of 2021 under the provisions of the Guardians and Wards Act, 1890 (for short 'the Act') seeking for guardianship and custody of the child.

4. Although notice was served on the Opposite Party and she had entered appearance but she preferred not to file written statement/objection within the stipulated time. As such, she was precluded from filing of the written statement vide order dated 16th March, 2022. Thereafter, the Petitioner has been examined and his evidence has been closed. Subsequently, the Opposite Party filed an application on 18th July, 2022 with a prayer to condone the delay and accept the written statement filed by her. Learned Judge, Family Court, Bhadrak allowed the same vide order dated 16th August, 2017 without properly considering the objection raised by the Petitioner. Hence, this writ petition has been filed.

5. It is submitted by Mr. Mishra, learned counsel for the Petitioner that the Petitioner has no objection, if the Opposite Party is allowed to contest the case without filing any written statement. If her written statement is accepted, it will amount to *de novo* trial of the proceeding and will delay the matter, which would be detrimental to the welfare of the child. In view of the above, he prays for setting aside the impugned order and to allow the Opposite Party to contest the proceeding without filing any written statement/objection.

6. Taking into consideration the submission made by learned counsel for the Petitioner and on perusal of the case record, it is apparent that the child is in custody of her maternal grandparents. It is alleged by the Petitioner that as the maternal grandparents refused to hand over the child to the Petitioner, who is the natural/legal guardian, he is constrained to file the petition under the provisions of Guardians and Wards Act for custody of the child.

7. Since the matter involves custody of a minor child, who is with her maternal grandparents, interest of justice will be best served, if the petition under the Guardians and Wards Act for custody of the child is disposed of on merit. Law is well settled that the provisions of Code of Civil Procedure and Evidence Act are not strictly applicable to a proceeding under the Family Court's Act. Thus, examination of the Petitioner itself will not be bar for the learned Judge, Family Court, Bhadrak to accept the written statement filed by the Opposite Party.

8. In view of the above, this Court is of the considered opinion that learned Judge, Family Court, Bhadrak has committed no error in allowing the petition and accepting the written statement/show cause reply filed by the Opposite Party-Respondent.

9. Since the matter relates to custody of the child, learned Judge, Family Court, Bhadrak shall do well to see that the matter is disposed of on merit as expeditiously as possible preferably within a period of four months from the date of production of certified copy of this order. Prayer for unnecessary adjournment

should not be entertained by learned Judge, Family Court, Bhadrak. Parties are also directed to cooperate with learned Judge, Family Court, Bhadrak for early disposal of the proceeding.

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

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

(K.R. Mohapatra)
Judge



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