

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.22464 OF 2022

Khiraswari Meher @ Khireswari Meher ***Petitioner***

Mr. Satyabrata Panda, Advocate
-versus-

Subash Meher ***Opp. Party***

**CORAM:
JUSTICE K.R. MOHAPATRA**

ORDER
03.11.2022

Order No.

3. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition seeks to challenge the order dated 5th August, 2022 (Annexure-1) passed in Civil Proceeding No.80 of 2019, whereby learned Judge, Family Court, Sonapur refused to recall P.W.1 for his cross-examination by the Petitioner.
3. Mr. Panda, learned counsel for the Petitioner submits that on 6th April, 2022, the Opposite Party-Husband filed his evidence in affidavit and a copy of the same was served on the learned counsel for the present Petitioner-wife. As the Petitioner was absent on that date, learned counsel appearing for the Petitioner could not cross-examine the P.W.1 and prayed for an adjournment. Learned Judge, Family Court, Sonapur, however, rejected the time petition and closed the evidence of P.W.1 on the very same day. Assailing the same, the Petitioner filed W.P.(C) No.14595 of 2022, which was disposed of on 28th June, 2022 as withdrawn on the prayer of the Petitioner to enable the Petitioner to move a petition to recall the P.W. 1 for his cross-

examination. Accordingly, the Petitioner filed an application on 29th July, 2022 for recall of P.W.1 for his cross-examination. Learned Judge, Family Court, Sonapur holding that the Opposite Party (P.W.1) is a Government servant and the civil proceeding is of the year, 2019, dismissed the said application. Hence, this writ petition has been filed.

4. Mr. Panda, learned counsel further submits that the Opposite Party has filed the civil proceeding for dissolution of marriage by a decree of divorce. To show his bona fide, the present Petitioner along with the petition for recall of the witnesses has also submitted the questionnaire to be put to P.W.1 for just adjudication of the civil proceeding. Learned Judge, Family Court, Sonapur without taking into consideration the same passed the impugned order. Hence, he prays for setting aside the impugned order and also prays for a direction to recall P.W.1 for his cross-examination by the Petitioner.

5. Tracking report of Postal Department discloses that notice on Opposite Party is sufficient, but none appears on behalf of Opposite Party.

6. Taking into consideration the submissions made by learned counsel for the Petitioner and on perusal of the record, it appears that the Opposite Party filed his evidence in affidavit on 6th April, 2022 and a copy of the same was served on the learned counsel for the Petitioner, who was present in Court. As the Petitioner was absent on that date, learned counsel appearing on behalf of the Petitioner prayed for an adjournment to cross-examine the P.W.1 after taking instruction from her. The same was not accepted and the evidence of P.W.1 was closed. Although an application for recall of P.W. 1 has filed, the same

was not considered favourably on the ground that P.W.1 is a Government teacher and cannot come to the Court repeatedly for his cross-examination. The ground on which the recall of P.W.1 is refused cannot be held to be justified in the facts and circumstances of the case as the evidence of P.W.1 was closed on the very day the evidence in affidavit was filed. Thus, the Petitioner did not get an opportunity to cross-examine him.

7. In view of the above, the Petitioner should be given an opportunity to cross-examine P.W.1. Accordingly, the impugned order under Annexure-1 is set aside subject to deposit the cost of Rs.3,000/- (Rupees three thousand only) before the District Legal Services Authority. On deposit of cost before the District Legal Services Authority within a period of ten days hence along with a petition to recall P.W.1, learned Judge, Family Court, Sonapur shall do well to recall P.W.1 to be cross-examined by the Petitioner fixing a date.

8. It is made clear that cross-examination of P.W.1 shall be completed on the very day it is posted and no adjournment on behalf of the present Petitioner for cross-examination of P.W.1 shall be entertained on the date of his appearance. The date of cross-examination of P.W.1 shall be fixed taking into consideration the availability of P.W.1.

9. With the aforesaid observation and direction, the writ petition is disposed of.

10. The interim order dated 22nd September, 2022 passed in I.A. No. 11967 of 2022 stands vacated.

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

bks

(K.R. Mohapatra)
Judge