

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 23484 OF 2022

Afroj Parween

....

Petitioner

Mr. Arijeet Mishra, Advocate

-versus-

Md. Jamil @ Zamil Ahammad

....

Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

15.09.2022

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 19th May, 2022 (Annexure-4) passed in C.P. No.189 of 2019, whereby learned Judge, Family Court, Kendrapara rejected an application filed by the Petitioner under Order VI Rule 17 C.P.C. to incorporate the order passed in criminal case and foundational pleading thereto.
3. Mr. Mishra, learned counsel for the Petitioner submits that the Opposite Party has been convicted in a criminal case by learned J.M.F.C, Aul in G.R. Case No.357 of 2014 and another case is pending before learned S.D.J.M., Kendrapara in G.R. Case No.626 of 2021. The Petitioner also prayed for suitable amendment of pleadings in support of the said plea. Application of the Petitioner was rejected mainly on the ground that hearing of said civil proceeding has already commenced and that the criminal proceeding was disposed of on 22nd November, 2019

and no step in the meantime is taken for amending the pleadings suitably. He further submits that said fact was not within the knowledge of the Petitioner and she being a destitute lady could not obtain the documents in time to incorporate the pleadings of criminal proceeding. The materials sought to be incorporated are essential for just adjudication of civil proceeding. Although these facts were not specifically pleaded in the petition for amendment, but at the time of argument, the Petitioner had raised such plea, which was not considered in its proper perspective. It is further submitted that learned Judge, Family Court while adjudicating the petition being hyper technical held that the petition under Order VI Rule 17 C.P.C. was not supported by any verification. Hence, he prays for setting aside the impugned order under Annexure-4 and to permit the Petitioner to amend the pleadings of civil proceeding suitably.

4. Taking into consideration the submission made by learned counsel for the Petitioner and on perusal of the record, it appears that the Petitioner is effectively seeking for amendment of the pleadings to incorporate certain facts with regard to conduct of the Opposite Party. The same is essential to be considered in a proceeding for dissolution of marriage. It further appears that although evidence on affidavit was filed by the Petitioner but subsequently it was not pressed, as it was objected by the Opposite Party. Thus, technically hearing of the proceeding has not commenced. At this stage, Mr. Mishra, learned counsel for the Petitioner submits that interest of justice

will be best served, if the Petitioner files a fresh comprehensive application under Order VI Rule 17 C.P.C. along with certified copy of this order within a period of two week hence and same may be directed to be considered in accordance with law.

5. In view of the above, this writ petition is disposed of with an observation that in the event, the Petitioner files a comprehensive application under Order VI Rule 17 C.P.C., the same shall be considered in accordance with law, giving opportunity of hearing to the parties concerned keeping in mind the observation made hereinabove. If such application is filed within the stipulated period, as stated above, the impugned order under Annexure-4 shall be kept in abeyance till its disposal.

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

(K.R. Mohapatra)
Judge

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