

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.609 of 2021

Manoj Kumar Nayak

....

Petitioner(s)

Mr. S.K. Mishra,
Advocate

-versus-

Jhunupriya Nayak

....

Opposite Party(s)

Ms. T. Singh,
Advocate

CORAM:
JUSTICE BISWANATH RATH
ORDER
03.01.2022

Order No.

1. 1. This Civil Miscellaneous Petition arises out of rejection of an application at the instance of the husband for sending of the Ext.1 to 4 for opinion of the handwriting expert in a matrimonial proceeding. The pleadings disclose that the matrimonial case has been filed by the husband seeking divorce against the wife-Opposite Party on the premises of mental illness. It also appears, the husband has also introduced Ext.1 to 4 to establish his such claim during course of evidence. It is alleged that even though the Exts.1 to 4 have been admitted, however, on the signature aspect there is strong dispute by the wife who clearly disputes the signature on its authenticity during evidence. The trial court after hearing the matter on the said aspect has come to reject the application and thus the present Civil Miscellaneous Petition.
2. Mr. Mishra, learned counsel for the Petitioner advancing his submission against the order of rejection of such application, submitted that once the foundation on the allegation rests on Exts.1

to 4, unless the signature aspect is cleared by the handwriting expert, all the exhibits loses its values and there may not be fair trial so far as the husband is concerned.

3. In her opposition Ms. Sinha, learned counsel for the Opposite Party-wife submitted that since the evidence is already over, sending of Exts.1 to 4 to the handwriting expert is a closed chapter and for the stage of the dispute involved herein, attempt of the Petitioner is just to linger the proceeding. It is, in the above background of the matter, Ms. Sinha, learned counsel for the Opposite Party while supporting the impugned order objects entertainability of the Civil Miscellaneous Petition.

4. Considering the rival contentions of the parties, this Court finds, there is no dispute that basing on the pleadings in the matrimonial case in the evidence the husband has attempted to establish his case through Exts.1 to 4. There is no dispute that the Exts.1 to 4 has been admitted except there is a dispute to the signature. It is, at this stage, this Court observes, if the authenticity of the signature aspect is not clear, the contents of the Exts.1 to 4 automatically goes down and there is no proper trial of the matter. If the signature is found to be genuine, then the Exts.1 to 4 becomes very vital document, which helps in the effective trial of the matter. Since there is requirement of trial of the matter, unless the dispute / controversy over the aspect of signature is cleared through handwriting expert, there may not be fair trial of the dispute of this nature.

5. In the circumstance, this Court finds, there has been no proper application of mind by the trial court in examining such aspect. In the process, this Court interfering in the impugned order

dated 21.10.2021 passed in MAT No.48/2016 sets aside the same and while allowing the application so filed, directs the trial Court to permit the Petitioner to deposit appropriate cost for sending the Exts.1 to 4 to the handwriting expert with specific question. The trial Court is directed to ensure submission of the opinion of the handwriting expert within one month from the date of submission of cost. This Court observes, in the event of proving or not proving by the handwriting expert, if either of the parties moves for further evidence, such party may be permitted to have further evidence only to that extent.

6. With this observation and ruling the Civil Miscellaneous Petition stands allowed.

(Biswanath Rath)
Judge

Ayaskanta Jena

