

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 29402 OF 2022

Akashmika Nayak

..... Petitioner

Miss Agnisikha Ray, Advocate
on behalf of Mr. L.N. Patel, Advocate

-versus-

Rabinarayan Das

..... Opp. Party

Mr. B. Moharana, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

19.12.2022

Order No.

2.
 1. This matter is taken up through hybrid mode.
 2. The Petitioner in this writ petition seeks for a direction to set aside the orders dated 17th October, 2022 and 21st October, 2022 (Annexure-5) passed by learned Judge, Family Court, Bhubaneswar in C.P. No.527 of 2017, whereby an application to recall P.W.1 for further cross-examination has been rejected.
 3. Miss Ray, learned counsel appearing on behalf of Mr. Patel, learned counsel for the Petitioner submits that civil proceeding was posted to 13th October, 2022 on which date, the Opposite Party handed over a demand draft of Rs.77,000/-. However, civil proceeding was posted to 17th October, 2022 for further cross-examination of P.W.1. Due to her illness, the Petitioner could not appear and cross-examine P.W.1. Accordingly, an application for an adjournment was filed. Learned Judge, Family Court rejecting such application, closed the evidence of P.W.1 and posted the matter to 21st October, 2022 for evidence from the side of the Respondent. On 21st October, 2022 an application to recall the order dated 17th October, 2022 was

filed, which was dismissed. Hence, this writ petition has been filed.

4. It is her submission that the Petitioner being the wife, should be given an opportunity to further cross-examine P.W.1 on recall. Learned Judge, Family Court did not, at all, consider the fact that the P.W.1 could not be examined on the date fixed due to illness of the Petitioner. Hence, she prays for setting aside the impugned orders under Annexure-5 and to permit her to cross-examine the P.W.1 on recall.

5. Mr. Moharana, learned counsel for the Opposite Party submits that the Petitioner has been given ample opportunity by learned Judge, Family Court for cross-examination of P.W.1. It is his submission that on 18th May, 2022, P.W.1 was examined and partly cross-examined by the Petitioner. Due to paucity of the time, the matter was adjourned to 23rd June, 2022 for further cross-examination of P.W.1. On 23rd June, 2022, the Petitioner was absent on call. As the matter directed to be disposed of by this Court within a stipulated time, learned Judge, Family Court rejecting the time petition filed by the Petitioner, closed the evidence from the side of the Opposite Party and posted the matter to 8th July, 2022 for evidence from the side of the Petitioner. On 8th July, 2022 a petition was filed to recall P.W.1 for cross-examination. Accordingly, the said application was allowed and the matter was posted to 21st July, 2022 for further cross-examination of P.W.1 on recall. Thereafter, the case was posted to 3rd August, 2022, 19th August, 2022, 8th September, 2022, 15th September, 2022 and 22nd September, 2022. But, the Petitioner did not complete the cross-examination of P.W.1. Accordingly, the matter was posted to 13th October, 2022 on which date, a

demand draft of Rs.77,000/- is made over to the Petitioner and the matter was posted to 17th October, 2022. On the said date, the Petitioner did not cross-examine P.W.1 and prayed for an adjournment on the ground of her illness. Learned Judge, Family Court rejecting the same, closed the evidence of the Opposite Party and directed the Petitioner to lead evidence.

6. It is submitted that after closure of evidence from both the sides, learned Family Court has already closed the argument of the Opposite Party (Applicant before learned Family Court). The Civil proceeding is posted today, i.e. 19th December, 2022 for argument of the present Petitioner (Respondent before Family Court). At this stage, the present writ petition has been filed to recall P.W.1. Although, the impugned orders under Annexure-5 were passed since 21st October, 2022, the Petitioner waited till closure of argument to move this writ petition. Hence, the approach of the Petitioner is not at all *bona fide* and the writ petition is liable to be dismissed.

7. Learned counsel for the Petitioner does not dispute the fact that the matter was posted to aforesaid dates for cross-examination of P.W.1. But the learned counsel for the Petitioner submits that due to the difficulty on the part of the Petitioner, the cross-examination could not be completed. However, she again reiterates the prayer to provide her another opportunity to cross-examine of P.W.1.

8. Taking into consideration the aforesaid submissions of learned counsel of the parties, this Court is of the considered opinion that the Petitioner was thoroughly negligent in pursuing this matter. Further the matter has been targeted by this Court to be disposed of within a period of six months, which has already

expired in the meantime, as submitted by learned counsel for the Opposite Party. P.W.1 was once recalled on the prayer of the Petitioner. As no explanation is offered as to why, the Petitioner wants recall of P.W.1 for cross-examination and there is no sufficient reason to recall P.W.1 for further cross-examination at this stage, I am not inclined to entertain this writ petition.

9. Accordingly, this writ petition stands dismissed.

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

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