

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 36336 OF 2021

Anup Kumar Choudhury

....

Petitioner

Ms. Smita Das, Advocate

-versus-

Madhusmita Behera

....

Opp. Party

Mr. Gopal Krishna Behera,
Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

23.03.2022

Order No.

- 5.
1. This matter is taken up through hybrid mode.
 2. The Petitioner in this writ petition seeks for a direction to set aside the order dated 2nd November, 2021 (Annexure-4 series) passed in C.P No.14 of 2020 whereby learned Judge, Family Court, Angul rejected an application filed by the Petitioner under Order-VI Rule-17 C.P.C.
 3. Learned counsel for the Petitioner submits that the Civil Proceeding No.88 of 2019 was filed by the Petitioner before learned Judge, Family Court, Kendrapara under Section 13 (1)(ia) (ib) of Hindu Marriage Act, 1955 (for short 'the Act') before learned Judge Family Court, Kendrapara.
 4. This Court vide order dated 13th February, 2020 passed in TRP(C) No. 288 of 2019 under Annexure-2 transferred the civil proceeding to the Court of learned Judge, Family Court, Angul. It was further directed that learned Judge, Family Court, Angul shall do well to proceed with the matter with expedience so as to conclude the proceeding in accordance with law as expeditiously as possible, within a period of six months w.e.f. 4th March, 2020.

But the proceeding could not be concluded as the Opposite Party did not file her written statement, which was filed only on 10th March, 202. Conciliation in the civil proceeding being failed, the matter was posted for settlement of the issues. At that juncture, the Petitioner filed an application under Order-VI Rule-17 C.P.C. for amendment of the petition to incorporate certain new facts which could not be raised earlier.

5. Ms. Das, learned counsel for the Petitioner submits that learned Judge, Family Court, without considering the petition on merit and taking into consideration that the proceeding has been targeted by this Court, rejected the petition. She further submits that the amendment sought for is essential for just adjudication of the petition. Targeting of the matter by this Court should not stand on the way to provide adequate opportunity to the petitioner to put-forth his case. She, therefore, prays for setting aside the impugned order and to remit the matter back to learned Judge, Family Court, Angul to consider the application under Order-VI Rule-17 C.P.C. on its own merit by passing a reasoned order.

6. Mr. Mohanty, learned counsel for the Opposite Party vehemently objected to the same. It is his submission that the Petitioner by virtue of proposed amendment is essentially seeking to incorporate new facts which will certainly change the nature and character of the petition. A new plea is sought to be incorporated with regard to the alleged illicit relationship of the Opposite Party. Such wild allegations are without any basis. The application under Order-VI Rule-17 C.P.C. has been filed only to drag the litigation and harass the Opposite Party. He further submits that since the matter is targeted by this Court, all steps should be taken by learned Judge, Family Court to dispose of the

matter at an early date. In the meantime, time for disposal of the civil proceeding has been extended by this Court on more than one occasion. It is his submission that the amendment sought for is not at all necessary for proper adjudication of the case. He, therefore, prays for dismissal of the writ petition.

7. Taking into consideration the submissions made by learned counsel for the parties and on perusal of the impugned order, it appears that learned Judge, Family Court without entertaining the amendment petition on merit, has simply observed that the proposed amendment, if allowed, will definitely change the nature and character of the plaint and it will be difficult to dispose of the case within the target fixed by this Court. True it is that, this Court vide order under Annexure-2 directed learned Judge, Family Court, Angul to dispose of the matter within a period of six month w.e.f. 4th March, 2020. It is also submitted at the bar that the time for disposal of the civil proceeding has been extended from time to time. On perusal of the order sheet annexed to the writ petition as Annexure-4 series, it appears that the written statement was filed by the Opposite Party only on 10th March, 2021 serving copy on learned counsel for the Petitioner. Thus, the plea of learned counsel for Opposite Party to the effect that the amendment application is filed only to drag the litigation is not correct. Learned Judge, Family Court, Angul has not made any endeavour to examine as to whether the amendment sought for is essential for just adjudication of the case or not. The amendment application was rejected only on the ground that the proposed amendment, if allowed, will certainly change the nature and character of the plaint. When an application under Order-VI Rule-17 C.P.C. is filed, the Court should not go into the merits of the

proposed amendment but certainly the Court is required to see as to whether the proposed amendment is essential for just adjudication of the case or not. Such an endeavour appears to have not been done by learned Judge, Family Court. It appears that the time fixed by this Court has weighed in the mind of learned Judge, Family Court, while considering the petition under Order-VI Rule-17 C.P.C.

8. In view of the discussion made above, this Court is of the considered opinion that the impugned order dated 2nd November, 2011 passed by learned Judge, Family Court, Angul in C.P. No.14 of 2020 is not sustainable in the eyes of law and is accordingly set aside. The matter is remitted back to learned Judge, Family Court, Angul to consider the application under Order-VI Rule-17 C.P.C. on its own merit by providing adequate opportunity of hearing to the parties concerned.

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

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

(K.R. Mohapatra)
Judge

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