

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) NO. 39721 OF 2021

Sunita Rani Khadanga

.... ***Petitioner***

Mr. Rudra Narayan Parija,
Advocate

-versus-

Mahesh Prasad Singh

.... ***Opp. Parties***

Mr. Gopinath Mishra, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

Order No.

ORDER
04.04.2022

2.
 1. This matter is taken up through hybrid mode.
 2. The Petitioner in this writ petition seeks to assail the order dated 29th November, 2021 (Annexure-1) passed in C.P. No. 34 of 2017, whereby learned Judge, Family Court, Bhubaneswar while rejecting the petition for time filed by the Petitioner examined the Opposite Party as P.W.1 and closed the evidence, as no cross-examination was made. He, accordingly, posted the matter to 23rd December, 2021 for further evidence to be adduced on behalf of Opposite Party.
 3. It is submitted by Mr. Parija, learned counsel for the Petitioner that the Opposite Party filed an application under Section 13(1) of the Hindu Marriage Act, 1955 (for short 'the Act') before learned Judge, Family Court, Bhubaneswar, which was registered as C.P. No. 34 of 2017. The Petitioner on receipt of the notice appeared and filed written statement along with counter claim under Section 9 of the Act. It is the contention of Mr. Parija, learned

counsel for the Petitioner that learned Judge, Family Court, Bhubaneswar without considering the counter claim, is proceeding with the matter and ultimately recorded the evidence of P.W.1 on 29th November, 2021 on which date the present Petitioner had filed an application for adjournment. It is his contention that learned Judge, Family Court without considering the counter claim filed by the Petitioner in C.P. No. 34 of 2017 should not have proceeded with the matter. It is the duty of the Court to make an attempt for conciliation at the initial stage. Although the matter was posted on 9th August, 2018 for conciliation, learned Judge, Family Court by entertaining a petition filed by the Opposite Party praying the case to be adjudicated without proceeding with conciliation, placed the matter on 7th September, 2018 for consideration of the petition. When the said petition was pending, learned Judge, Family Court proceeded to record the evidence of Opposite Party. It is his contention that an application filed by the Petitioner to recall the order dated 21st September, 2021 is also pending. But, learned Judge, Family Court taking advantage of the absence of the present Petitioner proceeded with the matter and posted the matter for adducing evidence. By such order, learned Judge, Family Court ignored the counter claim filed by the Petitioner. It is further submitted that the Petitioner has right to cross-examine the Opposite Party, which has been taken away by virtue of the impugned order dated 29th November, 2021. In that view of the matter, he prays for setting aside the impugned order and to remit the matter back to the learned Judge, Family Court, Bhubaneswar to consider his case in accordance with law and to give him an opportunity to cross-examine the P.W.1.

4. Mr. Mishra, learned counsel for the sole Opposite Party vehemently objects to the same and contended that the Court is in seisin of the matter to examine the validity of the order dated 29th November, 2021. Hence, the orders passed prior to that cannot be taken into consideration in this writ petition. It is his contention that if the Petitioner is aggrieved by the impugned order and wants to cross-examine the Opposite Party, he can file an application to that effect, which can be considered in accordance with law.

5. Taking into consideration the rival contention of the parties, this Court is of the considered opinion that the legality and validity of the orders save and except the order dated 29th November, 2021 cannot be adjudicated in the writ petition. So far as the order dated 29th November, 2021 is concerned, it appears that by rejecting an application for adjournment filed by the present Petitioner, the Court proceeded to record the evidence of P.W.1. If the Petitioner wants to cross-examine the Opposite Party, it is open for her to file an application to that effect. The Petitioner having not adhered to the procedure available to cross-examine the P.W.1, this Court is not inclined to interfere with the order dated 29th November, 2021.

6. Hence, this Court disposes of this writ petition with an observation that in the event the Petitioner files an application for recall of the order dated 29th November, 2021 under Annexure-1, the same may be considered in accordance with law giving opportunity of hearing to the parties concerned.

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

(K.R. Mohapatra)
Judge