

17.05.2024
Sl. No.6(DL)
srm

C.O. No. 509 of 2024
Smt. Sikha Hembram (Murmu)
Versus
Sri Sanat Kumar Hembram

Mr. Amitabha Ghosh,
Ms. Arpita Dhar

...for the Petitioner.

1. The revisional application arises out of an order dated January 4, 2024 passed by the learned Additional District Judge, 2nd Court, Jhargram, in Matrimonial Suit No.138 of 2021.
2. By the order impugned, the learned court rejected an application under Order XIV Rule 2 of the Code of Civil Procedure filed by the wife. The court *inter alia*, held that the suit was maintainable under the Hindu Marriage Act. Two preliminary issues were framed; (a) Whether the parties to the suit were guided by Santal Customs? (b) Was the suit maintainable as per Hindu Marriage Act, 1955?
3. The learned court was of the opinion that in paragraph 1 of the petition for divorce, the husband had stated that

the marriage took place as per Hindu rites and customs on March 3, 2006 and the parties were guided by Hindu Law as they had adopted the Hindu customs. In the affidavit portion also, the husband had mentioned that he was Hindu by religion.

4. The wife filed a written statement. According to the learned court, in the said written statement the wife did not mention that the parties were Santals and were not guided by Hindu Law. The learned court recorded that in paragraph 6 of the written statement, the wife did not categorically deny the averments made by the husband in paragraph 1 of the application for divorce.
5. The written statement filed by the wife was supported by an affidavit. She mentioned her faith as Hindu. The court held that the parties were guided by Hindu rites and customs, in view of the affidavit of the wife and in the absence of any specific denial by the wife.
6. Reference was also made to the application under Section 24 of the Hindu Marriage Act filed by the wife. In the affidavit, the wife had again mentioned her religion as Hindu. The learned court was of the further view that in the absence of any specific notification under Article 342

of the Constitution of India, the bar under Section 2 of the Hindu Marriage Act would not be applicable.

7. Mr. Ghosh, learned Advocate appearing on behalf of the wife/petitioner submits that preliminary issues were framed by the court, at the instance of the wife. The wife questioned the maintainability of the suit. She was misguided and misled into filing the earlier affidavits, by calling herself a Hindu, although she was a practising *sari dharma*. The caste certificate of the husband recorded that he was a Santhal and a Scheduled Tribe. Affidavit-in-chief of the husband in the proceedings under Section 125 of the Cr.P.C. indicated that the parties were married as per the Santhal customs. Such facts have been clearly mentioned in the application.

8. I have found serious contradictions in the wife's stand. Contradictory pleadings with regard to the wife's religion are on record. The application under Section 125 of the Cr.P.C. had been affirmed by mentioning that the wife was a Hindu. In the affidavit to the written statement and in the affidavit to the application under Section 24 of the Hindu Marriage Act, the wife had stated that she was a Hindu. In the written statement, she had not denied the contents of paragraph 1 of the application

for divorce, in which the husband had categorically stated that the marriage took place as per Hindu rites and customs and the parties had adopted the Hindu customs.

9. The learned trial Judge, upon finding the above contradictions, arrived at the conclusion that the suit was maintainable under the Hindu Marriage Act.

10. Order XIV Rule 2 of the Code of Civil Procedure provides that a case can be disposed of on a preliminary issue, when the court is of the opinion that the entire case or any part thereof, can be disposed of on issues of law only and such issues can be tried first, namely, (a) jurisdiction of the court or (b) a bar of the suit created by law for the time being in force.

11. The contention of the wife was that the court did not have jurisdiction to adjudicate the suit for divorce under the Hindu Marriage Act, as there was a bar under the law. It is submitted by Mr. Ghosh that when the law provided that the suit could be dismissed on the ground of lack of jurisdiction, the learned court should have directed the parties to file interrogatories and answer those in terms of the Order XIV Rule 3 of the Code of Civil Procedure. If such interrogatories were filed by the respective parties, the contradictions could be explained.

12. I find that the contentions of the wife could not have been decided as a preliminary issue. Further evidence would be required. The learned court disposed of the preliminary issues on the basis of the pleadings and records and rightly held that the pleadings and the affidavits filed by the wife gave rise to the admission of the wife that she was guided by the Hindu rites and customs.

13. Considering the submissions of Mr. Ghosh and upon perusing the records, this Court is of the view that in this case the issue of maintainability ought to have been decided as a main issue. The rejection of the preliminary issue is correct, but the petitioner may approach the court at the time of framing of issues and pray that maintainability of the suit should be decided as an issue in the suit. Such approach, if made, shall be decided according to law.

14. The contention of the Mr. Ghosh with regard to non-compliance of Order XIV Rule 3 is farfetched. The same deals with framing of issues in the suit.

15. The revisional application is, thus, disposed of.

16. There shall be no order as to costs.

17. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)