A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 4702 of 2026

An application under Articles 226 & 227 of the Constitution of India.

Kalyani Baral **.....** **Petitioner**

-versus-

Sameer Kumar Nayak **.....** **Opposite Party**

Advocates appeared in this case:

For Petitioner : Mr. Bhagabat Prasad Rath, Advocate

For Opp. Party : Ms. Akankhya Kabi, Advocate

CORAM:

THE HON'BLE MR. JUSTICE M. S. SAHOO

J U D G M E N T

Decided on 07.04.2026

MRUGANKA SEKHAR SAHOO, J.

1. The application under Articles 226 & 227 of the Constitution of India has been filed challenging the order dated 16.01.2026 passed by the learned Judge, Family Court, Bhubaneswar in C.P. No. 297 of 2021. The C.P. has been filed by the opposite party-husband in the marriage under the provision of section 13(1)(i-a) of the Hindu Marriage Act, 1956 seeking dissolution of marriage between

the parties solemnised on 19.01.2020 and for grant of a decree of divorce, the present petitioner-wife in the marriage being the opposite party.

2. Learned counsel for the petitioner is heard at length.

3. In the pending petition the present petitioner who is the defendant filed application on 05.01.2026 purportedly under Order O.1 Rule 10(2) read with section 151 of Code of Civil Procedure that was rejected by the order dated 16.01.2026, under challenge.

Copy of the said application has been annexed to the writ petition marked as Annexure-4. The prayer in the application is to implead a lady stating her to be the sister-in-law of the petitioner-husband and seeking to implead her as intervenor/petitioner.

4. Learned Judge, Family Court for deciding the application has considered the application as well as the objection of the petitioner-husband.

The submissions of the defendant wife support her prayer in the interlocutory application have been noted by the learned Family Court in order dated 16.1.2026 which is reproduced herein :

> *"It is submitted by the respondent that she categorically expressed the illicit relationship with the intervenor by the petitioner in her written statement in paragraph-16 (b) to (f). If the proceeding is decided in absence of the intervenor, she would suffer irremediable damage which cannot be compensated in any pecuniary benefit. It is further, submitted that the intervenor is the necessary party and her presence is necessary for an effective and*

complete adjudication of the dispute and ensuring justice."

5. The objections of the petitioner-husband have been noted in the said order which is reproduced herein :

> *"…that the petitioner being dominus litis has every right to add and delete of any parties. The respondent since 07.12.2023 is avoiding to adduce evidence by filing and false and baseless petitions only to delay the proceeding. It is further submitted that the averments made by the respondent against Smt. Rekha Nayak are baseless, false and without evidence. She is neither a necessary party nor a proper party as the issue in the present case revolved around cruelty being committed by the respondent towards the petitioner…"*

The defendant wife has filed rejoinder which has also been noted by the learned Family Court.

6. The conclusions of the learned Family Court are that the Court must be satisfied that the presence of the party sought to be impleaded would be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit. Hindu Marriage and Divorce (Orissa High Court) Rules, 1956 prescribes Rule-5 regarding the necessary parties which empowers petitioner to make such person as co-respondent on the ground that the respondent is living in adultery or has committed adultery with any person.

It has been observed by the learned Family Judge thus :

> *"the respondent submitted her written statement defending her case denying all the allegations leveled against her as well as allegation of cruelty against the*

petitioner without any specific prayer. When there is specific provision such as Rule-5 of the Hindu Marriage and Divorce (Orissa High Court) Rules, 1956 and Order-1 Rule-10 (2) CPC, I do not think that Sec. 151 CPC is applicable in the present fact and circumstances. The specific provisions categorically allows the petitioner to add necessary party on the ground of adultery only. The respondent had not taken any ground of adultery in order to get any decree. Therefore, the concerned intervenor is not a party at all in this case and as such, the petition being devoid of merit stands rejected."

7. Learned counsel for the opposite party made her submissions in response supporting the order of the learned Judge, Family Court, submitting that writ petition is to be dismissed being devoid of any merit.

8. Learned counsel for the opposite party refers to the earlier order dated 07.03.2025 passed by the coordinate Bench in W.P.(C) No.7784 of 2024 wherein it was directed that the C.P. is to be disposed of at the earliest. She brings to the notice of this Court that the C.P. is lingering for evidence from the side of the respondent-wife since 07.12.2023. Respondent was given last chance after direction dated 07.03.2025 by this Court to adduce evidence on 19.12.2025. Therefore, the learned Family Court had directed the defendant/respondent wife to adduce evidence on 20.01.2016.

9. Since the petitioner relies on the provision of C.P.C. i.e., Order O.1 Rule 10(2), that requires consideration and is reproduced herein :

"10. Suit in name of wrong plaintiff.

xxx xxx xxx

(2) Court may strike out or add parties – *The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."*

10. In considered view of this Court, provisions i.e., Order I Rules 1, 2 & 3 of C.P.C. would also have bearing on the present adjudication, they need to be considered and are reproduced herein for convenience of reference :

"ORDER - I
PARTIES TO SUITS

1. ***Who may be joined as plaintiffs****-All persons may be joined in one suit as plaintiffs where :-*
   (a) any right to relief in respect of, or arising out of, the same act or transaction or series of act or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and
   (b) if such persons brought separate suits, any common question of law or fact would arise.
2. *Power of Court to order separate trial- Where it appears to the Court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the Court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient.*
3. *Who may be joined as defendants- All persons may be joined in one suit as defendants where,-*
   (a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative,; and

(b) if separate suits were brought against such persons, any common question of law or fact would arise."

11. It is argued by the learned counsel for the petitioner that the defendant before learned Family Court wants to implead the lady as 'petitioner/intervenor' in the C.P. filed by the husband in the marriage as the defendant-wife alleges adultery against the husband-petitioner.

12. Concededly the C.P. is under the provisions of the Hindu Marriage Act, i.e. S.13(1), filed by the husband seeking decree of divorce alleging cruelty against the opposite party wife. By applying the principles contained in Order 1 Rule 1, the defendant wife seeking impleadment has to satisfy the court that any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such person who is made a plaintiff. In the alternative for impleading the lady the defendant has to make out a case that if the lady brings another suit seeking divorce' that would involve common question of law.

13. In considered view of this Court as the petitioner-husband is seeking divorce from the opposite party-wife in the C.P., the above contentions to attract applicability of Order I Rule 1 would not be tenable as no other person can be alleged to seek relief of divorce/dissolution of marriage against the wife.

Now applying the principle contained/enunciated in O.1 Rule 1(b), the answer would be: apart from the

husband no one can bring suit (CP in the present case) seeking divorce from the opposite party wife much less, the lady who is sought to be sought to be arrayed as 'petitioner' in the suit.

14. Though the petitioner herein seeks addition of the lady as petitioner, the question that falls for adjudication would also require consideration of O.1 Rule 3 i.e. whether the said lady can be joined as a defendant. On reading Order I Rule 3, it has to be held that the defendant wife has no right to relief against any other person other than the husband who seeks divorce invoking section 13(1) of the Hindu Marriage Act.

15. By applying Order I Rule 10(2), it has to be held that in a matrimonial suit filed by the husband, the wife being the defendant, the defendant wife cannot seek addition of another lady as a plaintiff/intervenor in addition to her husband in the marriage who is the plaintiff seeking divorce.

16. In view of the detailed discussions above, it has to be and is held that the writ application is devoid of any merit, it has to be and is dismissed.

17. It is further directed that the parties shall appear before the learned Family Court on 23.04.2026. On the said date learned court shall proceed to fix a date as would be directed by the said court for the defendant-wife to adduce evidence.

18. The parties are directed to cooperate sincerely prosecuting the matter as the matter is pending since 2021.

Before parting with the matter this Court records the submission on behalf of the wife that she wants to resume and continue with the matrimony.

(Mruganka Sekhar Sahoo)
Judge

Orissa High Court, Cuttack
The 7th day of April, 2025/dutta.

Signature Not Verified
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Reason: Authentication
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