

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 2348 of 2023

.... **Petitioner**

Mr.Sanjeev Udgata, Advocate

-versus-

.... **Opp. Party**

Mr. Pabitra Kumar Nayak, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

Head and disposed of on 05.05.2023

JUDGMENT

1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition prays for a direction to set aside the order dated 16th January, 2023 (Annexure-4) passed by learned Judge, Family Court, Jharsuguda in CP No.91 of 2022, wherein an application filed by the Petitioner praying *inter alia* to post the matter for further conciliation between the parties, has been rejected observing that the parties themselves by their conduct have shown disinclination towards reconciliation, despite efforts by the Court and the counselor.
3. Mr. Udgata, learned counsel for the Petitioner submits that CP No.91 of 2022 was registered on the file of learned Judge, Jharsuguda on being transferred from Family Court, Jaipur, Rajasthan pursuant to direction of the Hon'ble Supreme Court in Transfer Petition (Civil) No.2226 of 2019. After the matter was received by the Family Court, Jharsuguda, the Petitioner-Wife is making sincere attempts for reconciliation in the matter. But the learned Judge, Family Court did not take that matter seriously. It is his submission that Section 23(2) of the

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Hindu Marriage Act, 1955 (for brevity, 'the Act') provides that before proceeding to grant any relief under the Act, it shall be the duty of the Court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about reconciliation between the parties. He further draws attention of this Court to Section 9 of the Family Courts Act, 1984 and Rule 18 of the Family Courts (Court) Rules, 2010 and submits that attempt for conciliation between the parties plays a vital role in a proceeding before the Family Court. Hence, all endeavours should be made for reconciliation of the dispute between the parties.

3.1 In support of his contention, Mr. Udgata, learned counsel for the Petitioner relied upon a decision of the Hon'ble Supreme Court in the case of **Balwinder Kaur v. Hardeep Singh**, reported in AIR 1998 SC 764, wherein it is held that a duty is cast on the Court in the first instance, in every case to make endeavour to bring about a reconciliation between the parties. The Court can even refer the matter to any person named by the parties for the purpose of reconciliation and to adjourn the matter for that purpose. These objectives and principles govern all Courts trying matrimonial matters. He also relied upon the decision in the case of **Jagraj Singh vs Birpal Kaur**, reported in AIR 2007 SC 2083 and submits that the Court should not give up the efforts for reconciliation merely on the ground that there is no chance for reconciliation. It is the duty of the Court to make sincere endeavour for reconciliation. He further submits an attempt for reconciliation between the parties

should be made in the beginning and not at the end of the matrimonial proceeding. The matrimonial Court besides being a Court of law has to decide matters and grant relief thereon in a very sensitive field. If an endeavour for conciliation is not made, the order would be illegal. The intention of the Parliament requires the Court in the first instance to make reconciliation between the parties. In the light of the said intention and paramount consideration an order can be passed by a matrimonial Court asking a party to the proceeding to remain personally present. He also relied upon the case of *K. Srinivas Rao vs D. A. Deepa*, reported in 2013 (1) CLR (SC) 853, wherein Hon'ble Supreme Court discussing Section 9 of the Family Courts Act, held that Family Court shall make all efforts to settle the matrimonial disputes through mediation, even if the Counselor submits a failure report, the Family Court shall on consent of the parties, refer the matter to mediation centre and can always extend the time limit. He further relied upon the decision of the Allahbad High Court in the case of *Nisha Soni v. Mukesh Soni*, reported in AIR 2019 Allahabad 189, in which the decree was set aside for not undergoing the conciliation process. He, therefore, submits that the Court instead of rejecting a petition filed by the Petitioner for reconciliation between the parties, should have made endeavour for a reconciliation, if necessary by extending the time limit.

3.2 It is his further submission that Hon'ble Supreme Court, while disposing of Transfer Petition (Civil) No.2226 of 2019, has only observed that the transferee Court shall make endeavour to dispose of the case within six months. But that does not preclude

the Family Court from following the mandatory provisions of the Family Courts Act and Rules framed thereunder. He, therefore, prays for setting aside the impugned order and to direct the Family Court to make an endeavour for reconciliation.

4. Mr. Nayak, learned counsel for the Opposite Party submits that it is at the instance of the Petitioner, the Transfer Petition (Civil) was filed before the Hon'ble Supreme Court for transfer of the Civil Proceeding pending before Family Court, Jaipur, Rajasthan to the competent Court at Jharsuguda, Odisha. Considering the petition, Hon'ble Supreme Court, vide order dated 28nd July, 2022, passed the following order:-

“Considering the facts and circumstances of the case, this transfer petition is allowed. The transferrer court shall forward the papers of the Divorce Petition within a period of four weeks. Since, both the parties are medical professionals, the transferee court shall permit the parties to appear through virtual mode or at least through their respective counsel, till such time the trial commences and their appearance becomes necessary. The transferee Court shall endeavour to dispose of the case within six months.”

4.1 Although at para-4 of the writ petition, the Petitioner has stated about the transfer application, but the Petitioner has conveniently suppressed the timeline provided by Hon'ble Supreme Court for disposal of the civil proceeding. The order of the Hon'ble Supreme Court has also not been annexed to the writ petition stating that it will be produced at the time of hearing of the writ petition.

4.2 It is his submission that while disposing of the transfer application, Hon'ble Supreme Court has stated that since both the parties are medical professionals, transferee Court shall

permit the parties to appear through virtual mode or at least through their respective counsel till such time the trial commences and their appearance becomes necessary. In spite of the said direction the Petitioner filed an application for a direction for personal appearance of the Opposite Party. The said application was rejected vide order dated 4th November, 2022 and the matter was posted to 23rd November, 2022 for conciliation through virtual mode. On the said date, none of the parties were present. Advocates also did not take any step in the matter due to the resolution passed by the local Bar. As such, the matter was posted to 2nd December, 2022, on which date also none of the parties was present, but learned counsel for the Petitioner filed an application praying for adjournment. Learned Judge, Family Court rejecting the petition for adjournment, posted the matter for filing of written statement. Thus, it cannot be said that the Court did not make any endeavour for conciliation. Further learned Judge, family Court, while passing the impugned order, has observed that during course of trial, conciliation proceeding can take place if there appears an element of settlement of dispute between the parties. In that view of the matter, learned Judge, family Court has not made any error in rejecting the petition. Although a timeline has been fixed by Hon'ble Supreme Court, the Petitioner without cooperating with learned Judge, Family Court is filing such petitions only to linger the proceeding and harass the Opposite Party. As such, the writ petition being devoid of any merit should be dismissed.

5. Considering the rival contentions of the parties and on perusal of record, this Court finds that the Petitioner has not come to the Court with clean hands. Although at para-4 of the writ petition, it is stated that on a transfer petition being filed by the Petitioner, the Civil Proceeding has been transferred to the Family Court, Jharsuguda, but nothing has been mentioned about appearance of the parties through virtual mode or the timeline fixed by the Hon'ble Supreme Court for disposal of the Civil Proceeding. The order of the Hon'ble Supreme Court has also not been annexed to the writ petition. It was brought to the notice of this Court by the learned Judge, Family Court, Jharsuguda vide its letter No. 111 dated 20th February, 2023 (Flag-Z1). The Opposite Party by filing counter affidavit also brought the aforesaid fact to the notice of this Court. Considering the same, this Court, vide order dated 19th April, 2023, vacated the interim order dated 2nd February, 2023 passed in IA No.1107 of 2023. While disposing of the transfer application, Hon'ble Supreme Court has observed that both the parties being medical professionals, transferee Court shall permit the parties to appear through virtual mode or at least through their respective Counsel, till such time the trial commences and their appearance becomes necessary. In spite of the same, the Petitioner filed an application seeking personal appearance of the Opposite Party for reconciliation which was rejected on 4th November, 2022 and the matter was posted for virtual conciliation. Thereafter, on two consecutive dates, i.e., 23rd November, 2022 and 2nd December, 2022, none of the parties appeared through virtual mode for reconciliation. It is, however, stated at para-5 of the writ petition that the Petitioner could not

appear on 23rd November, 2022, as the link was not provided to her. But, no such objection appears to have been raised by the Petitioner before learned Family Court. It further appears from the order sheet of the Civil Proceeding that learned Family Court, Jharsuguda had made endeavour on earlier occasions for a conciliation between the parties. But, the conciliator submitted a report on 29th November, 2022 stating that due to absence of the Petitioner (Respondent before Family Court), conciliation could not be made. In view of the above, it can never be said that learned Judge, Family Court has not made any endeavour for reconciliation. It appears that the Petitioner herself did not cooperate for conciliation. Strangely, the Petitioner is shading crocodile tears and making an attempt to blame the Family Court for not making any attempt for conciliation.

6. There can be no quarrel over the statutory provisions and ratio decided by different Courts with regard to the object of conciliation and effect thereof. When the parties do not cooperate with learned Judge, Family Court for reconciliation, the Court has no other option than to proceed with the matter in accordance with law. In addition to the above, in the instant case, Hon'ble Supreme Court has fixed a timeline for disposal of the Civil Proceeding by the transferee Court. While passing the impugned order, learned Judge, Family Court has also observed that even in course of trial, the conciliation proceeding can take place, if there appears an element of settlement between the parties. Thus, learned Judge, Family Court has not ruled out the possibility of conciliation between the parties even at the stage of trial. In view of the above, this Court finds that

learned Judge, Family Court has not committed any error in rejecting the petition filed by the Petitioner for not posting the matter for further reconciliation between the parties.

7. Before parting with the case, this Court with pain observes that the Petitioner has suppressed the material facts before this Court in the writ petition, more particularly the timeline fixed by Hon'ble Supreme Court. While moving the interim application also, it was not brought to the notice of the Court that Hon'ble Supreme Court while disposing of the transfer application, has observed that the transferee Court should make an endeavour for disposal of the matrimonial proceeding within six months. The Petitioner without any hesitation made attempt before this Court to get a favourable order by misleading the Court and suppressing material facts.

8. In view of the above, while dismissing the writ petition, this Court imposes a cost of Rs.25,000/- (rupees twenty-five thousand only) on the Petitioner, which shall be deposited by the Petitioner before learned Family Court, Jharsuguda before completion of trial. On such deposit being made, the same shall be paid to the Opposite Party. If the cost is not deposited, the learned Judge, Family Court, Jharsuguda may take necessary steps for realization of the same and pay the same to the Opposite Party.

Issue urgent certified copy of the judgment on proper application.

(K.R. Mohapatra)
Judge

s.s.satapathy