

IN THE COURT OF JUDGE, FAMILY COURT, BHUBANESWAR.

Present: Shri Pravakar Mishra, OSJS (S.B),
Judge, Family Court, Bhubaneswar.

C.M.A No. 59 of 2015
(Arising out of C.P. No. 368 of 2014)

Smt. Sulochana Behera, aged about 38 years,
W/o-Bramhachari Behera,
At-Naranpur, P.S.-Satyabadi, Dist-Puri, Odisha.
At present:- D/o-Kartikeswar,
At-Kashipur, P.O./P.S.-Nirakarpur,
Dist-Khurda, Odisha.

..... Petitioner

Versus

Sri Bramhari Behera, aged about 40 years,
S/o-Kumara Behera,
At-Naranpur, P.S.-Satyabadi,
Dist-Puri, Odisha.
At present working as A.S.O., Higher Education Department,
Odisha Secretariat, Bhubaneswar, Dist-Khurda, Odisha.

..... Opp. Party

Date of Argument : 04.01.2016

Date of Order : 18/19.01.2016

ORDER

This order arises out of an application filed by the petitioner-wife U/o-9, Rule-13 of 151 C.P.C. for restoration of C.P. No. 368/2014 after setting aside the ex-parte order dated 02.05.2015 and ex-parte judgment dated 16.05.2015.

2. The facts of the case of the petitioner are that on 02.05.2015 though she has present yet, she could not able to hear the calls of the Court for which the case was posted to 08.05.2015 for hearing ex-parte and on that date ex-

parte hearing was taken up and subsequently ex-parte judgment was pronounced on 16.05.2015. It is the further case of the petitioner that there is no delay in the filing of the said restoration application and if the restoration petition will not be allowed she would suffer irreparable loss.

3. The Opp. Party entered contest by filing his objection. The specific case of the Opp. Party is that though the petitioner was present in the Court at the time of call of hearing of the case yet, she had intentionally withdrawn her presence from the court with a deliberately protract the trial is as much as harass him. It is further averred by him that the petitioner could not show her sufficiency from withholding her appearance from the Court on the appointed date of hearing i.e. 02.05.2015 and hence, the C.M.A. No. 59 of 2015 is liable to be dismissed.

4. The only point formulated to resolve the controversy is whether petitioner has sufficient cause to remain absent from the court on 02.05.2015?

5. The petitioner in order to prove her case she, herself, has been examined as P.W.1. The Opp. Party in order to negate the claim of the petitioner, he has been examined as O.P.W. 1. Both the parties chose not to file any document on their behalf.

3. The petitioner while being examined as P.W. 1 has supported the averments made in his petition. The petitioner has stated that she could not hear the call of the court as she was inside the Court Hall. She has again stated that at the time of calls by this Court she has gone to the toilet for which she could not appear. The Opp. Party has stated that the petitioner was present in the Court but she avoided to attend at the time of call even though she requested her to attend the Court. The statement of the petitioner that she had gone to toilet at the time of call it a got-up story as the said fact has not pleaded in her petition. Well settled is the Rule of Law that the Court cannot look into the fact which has not pleaded in the petition. Therefore, her

aforesaid statement is rejected.

4. Now the primal question for consideration is whether the party remain inside the court could not hear the call of the court to participate in the hearing is a sufficient cause or a good cause to allow the restoration petition?

6. To my considered opinion, this could not be considered as sufficient cause much less a good cause or a good ground to allow the petition. Had the petitioner present on that date, she could have taken the next date of hearing and could have participated in the hearing on the subsequent dates. From the pre-pens conduct of the petitioner, it is well disenable that she had a mala fide intention for procrastination of the dispute to trash the Opp. Party. During hearing of the case, when I quizzically asked the petitioner to join with the Opp. Party she zapped replying that she is not interested to return to her matrimonial home but interested to join with the Opp. Party at his working place. In that view of the matter, no prejudice shall be caused to the petitioner if the C.M.A. could not be allowed since the decree has been passed directing the petitioner to join with the Opp. Party. Rather if the prayer of the petitioner be accepted, it would cause prejudice to the Opp. Party and there will no ending of the litigation between the parties. Hence, it is ordered;

O R D E R

The petition filed by the petitioner is rejected but without any costs.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 19th day of January, 2016.

JUDGE, FAMILY COURT,
BHUBANESWAR.

List of witness on behalf of petitioner

P.W. 1 Smt. Sulochana Behera

List of witness on behalf of Opp. Party

O.P.W. 1 Sri Bramhachari Behera

List of exhibits on behalf petitioner

Nil

List of exhibits on behalf of Opp. Party

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.