

**AFR**

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.34178 of 2022**

***Ajay Kumar Nanda @ Pintu***

....

***Petitioner***

Mr. Ashutosh Mishra, Advocate

*-versus-*

***Ashok Kumar Padhee and others***

....

***Opp. Parties***

Mr. Samir Kumar Mishra, Senior Advocate

Being assisted by Mr. J.Pradhan, Advocate

(For Opposite Party Nos.1 to 3)

**CORAM:  
JUSTICE K.R. MOHAPATRA**

**JUDGMENT**

**24.07.2023**

**Order No.**

3. 1. This matter is taken up through hybrid mode.
2. Order dated 2<sup>nd</sup> December, 2022 (Annexure-1) passed by learned Judge Family Court, Jharsuguda in GP Case No.5 of 2003 of 2015/2021 is under challenge in this writ petition, whereby an application filed by the Petitioner under Order VII Rule 14 CPC to produce certain documents relating to his property and assets, has been rejected.
3. Mr. Mishra, learned counsel for the Petitioner submits that the proceeding has been filed for custody of the minor child and to declare him as the guardian of the child. It is his submission that the minor child is his natural son, who was born out of the wedlock of the Petitioner and one Lipika Padhee @ Nanda, who is dead. Even after death of his wife, the child (son) was staying with the Petitioner. But Opposite Parties forcibly took the custody of the child. Since then, minor son of the Petitioner is staying with the Opposite Parties. The Petitioner is staying in a joint family along with his parents and other family members. He has

sufficient means to maintain the child. Petitioner is the natural guardian of the child and has the capacity to maintain the child. During cross-examination of his witnesses, the Petitioner filed an application under Order VII Rule 14 CPC to produce certain documents relating to his property and assets. The said application was rejected on hyper-technical ground. Hence, this writ petition has been filed.

3.1 It is submitted that provisions of the Civil Procedure Code and Evidence Act are not strictly applicable to the case at hand. Learned Judge, Family Court should always keep in mind that hyper-technicalities in adjudicating applications as well as proceedings should not be adhered to. Learned Judge, Family Court rejected the application on the ground that the Petitioner did not file the documents along with the plaint sought to be produced at a belated stage. Further, after examination of PW-2, the Petitioner got an impetus to file such an application, which does not disclose the nature and description of documents to be filed. It accordingly, rejected the application.

3.2 It is his submission that evidence of the Petitioner has not yet been closed and the documents in support of his assets and property will assist the Court to determine the financial as well as social status of the Petitioner to determine as to whether the Petitioner is entitled to the custody of the child or not. He, therefore, prays for setting aside the impugned order and to permit the Petitioner to file the documents relating to his property and assets.

4. Mr. Mishra, learned Senior Advocate appearing on behalf of the contesting Opposite Parties submits that the Petitioner was

thoroughly negligent in maintaining the minor child. From his childhood, the minor is staying with the Opposite parties, who are none other than his maternal uncle and maternal grandparents. The child is with them after death of the wife of the Petitioner. It is his submission that Opposite Parties had earlier moved this Court in CMP No.1599 of 2018 against the order passed by learned District Judge allowing an application filed by the present Petitioner to take custody of his son and directing the Opposite Parties to hand over the custody of the child to the Petitioner. While disposing of the said application, vide order dated 15<sup>th</sup> October, 2020, this Court observed and directed as under :-

*“7. On perusal of the petition filed under Section 6 of the Act (Annexure-1) by the opposite party no.1, it reveals that although there are averments to the effect that the opposite party no.1 is staying in a joint family with his parents, brother, his wife and cousins, the same is not sufficient for consideration of his prayer for taking custody of the child in absence of any averment with regard to welfare of the child. Thus, the contention of Mr. Ragada to the effect that the opposite party no.1 has discharged the initial burden of proof, is not sustainable.*

*8. In view of the discussions made above, the impugned order under Annexure-2 is set aside and the matter is remitted back to the learned District Judge, Jharsuguda to consider the matter afresh in accordance with law and pass a reasoned order giving opportunity of hearing to the parties concerned within a period of six months from the date of first appearance of the parties. Parties may, if so advised, move learned District Judge for filing pleadings/additional pleadings as well as to adduce further evidence. In that event, learned District Judge, Jharsuguda shall do well to consider the same and pass necessary orders in accordance with law.*

*9. With the aforesaid observation and direction, this CMP is disposed of.”*

4.1. In view of the direction as quoted above, the Petitioner should have taken adequate steps to see that the proceeding is disposed of within a period of six months. Instead of cooperating

with learned Judge, Family Court, the present application has been filed to linger the proceeding. The application filed for production of documents is misconceived, inasmuch as the details of the documents sought to be produced has not been mentioned. Further, the relevancy of those documents has also not been stated. The only ground on which the application was filed was that due to inadvertence and communication gap, the documents could not be filed. Learned Judge, Family Court considering the matter in its proper perspective held that the prayer made by the Petitioner does not come under the special and exceptional circumstances. Hence, the petition was rightly rejected which warrants no interference.

5. Considering the submissions of learned counsel for the parties and keeping in mind the provisions under Section 10 of the Family Courts Act, 1984 (for short, 'the Act'), it is clear that provisions of the Civil Procedure Code shall apply to the suits and proceedings before the Family Court and for the purposes of the said provisions of the Code, the Family Court shall be deemed to be a Civil Court. However, Sub-section (3) of Section 10 makes it clear that nothing in Sub-section (1) and (2) of the Act shall prevent the Family Court laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or find out the truth of the facts alleged by the one party and denied by the other. Section-14 of the Act clearly stipulates that the provisions of the Evidence Act are not strictly applicable to the proceedings before the Family Court. Section-20 of the Act clearly stipulates that the Act has an overriding effect on all other legislations for the time being in force. In that view of the matter, the Family Court, while dealing

with an application filed by a party, should adopt a pragmatic approach to see that the truth is revealed. In the instant case, the Petitioner seeks to file certain documents in support of his case to show that he has sufficient means to maintain the child. In fact, the petition filed under Order VII Rule 14 CPC does not disclose the details of the description of the documents sought to be filed by the Petitioner. But that should not be sacrosanct to reject the petition at the threshold. Since the proceeding before the Family Court is distinct from a proceeding before a Civil Court, the Court should adhere to the procedure laid down under the Family Courts Act to reveal the truth and not to find out the fault with a party.

5.1 In that view of the matter, this Court is of the considered opinion that learned Family Court should have adopted a pragmatic approach in allowing such application by awarding adequate cost for the loss/prejudice, if any, caused to the adversary.

6. Since the Petitioner is intending to produce the documents in support of his assets and property to show his affluence to take care and maintain the child, he should have been given an opportunity to do so.

6.1. Accordingly, the impugned order under Snnexure-1 is set aside and the petition filed for production of documents relating to assets and property is allowed. The Petitioner is allowed to produce documentary evidence in support of his plea within a period of two weeks hence following due procedure, which shall be subject to payment of cost of Rs.5,000/- (rupees five thousand only) to the Opposite Parties for the prejudice caused to them.

7. With the aforesaid observation and direction, the writ petition is allowed to the aforesaid extent.

8. Learned Judge, Family Court shall also make all endeavour to see that the proceeding is concluded and disposed of at an early date. Parties are directed to cooperate learned Judge, Family Court, Jharsuguda in the regard.

Issue urgent certified copy of the order on proper application.

**(K.R. Mohapatra)**  
**Judge**



*s.s.satapathy*