

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**W.P (C) No. 2627 of 2019**

Manika Kundu

..... Petitioner

**Versus**

Subhash Kundu

..... Respondents

**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD**

For the Petitioner : Mr. P.S.A Swaroop Pati, Adv.

For the Respondents :

**6/Dated: 20<sup>th</sup> September, 2019**

This writ petition is under Article 227 of the Constitution of India, wherein the order dated 05.02.2019 passed in Original Suit No.559 of 2018 passed by Principal Judge, Family Court, East Singhbhum, Jamshedpur has been assailed.

Mr. P.S.A Swaroop Pati, learned counsel for the petitioner before proceeding further for argument raising the issue, has submitted that one interlocutory application being I.A. No.8849 of 2019 has been filed for seeking amendment in the main writ petition to the effect that the order impugned dated 05.02.2019 has been passed dealing with two petitions under Order 7 Rule 11 and another under Section 10 of the Code of Civil Procedure.

The contention has been raised by reference taken in the interlocutory application that the petitioner has not challenged the part of the order passed by the trial court of a petition filed under Order 7 Rule 11 of the C.P.C reserving his right to file representation against the said order and limiting its order only pertaining to petition filed under Section 10 of the C.P.C.

This Court after having heard learned counsel for the petitioner and going through the order impugned as also the contention raised in the interlocutory application, the prayer contained therein has found that the impugned order dated 05.02.2019 has been passed dealing with the two petitions, one filed under Order 7 Rule 11 i.e for rejection of the plaint and under Section 10 of the C.P.C i.e. for stay of proceeding pertaining to O.S. No.559 of 2018 the petitioner/wife has filed one matrimonial suit in the year being Mat. Suit No.86 of 2017 in the competent court of civil jurisdiction, at Jhargram, West Bengal.

Considering the aforesaid stand taken in the interlocutory application, the prayer made thereof needs to be allowed, accordingly the same is allowed. In consequence thereof, the writ petition is confined only to the order passed by the trial court under Section 10 of the C.P.C.

Accordingly, I.A. No.8849 of 2019 stands allowed.

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It is the case of the petitioner that she has filed one matrimonial suit being Mat. Suit No.86 of 2017 in the court of learned Additional District Judge, (First Court), Jhargram, West Bengal under Section 13, 13(i-a), 13(i-b), 13(2)i, 13.2(ii) read with Section 23 of the Hindu Marriage Act, 1956 in which the respondents has put his appearance as also the written statement has been filed. The respondents thereafter has filed another suit being O.S. no.559 of 2018 for dissolution of marriage under Section 27 (1) (d) and 2(ii) of the Special Marriage Act, 1954 in the court of in the court of Principal Judge, Family Court, at Jamshedpur.

Learned counsel for the petitioner has submitted that the petitioner has also filed Mat. Suit No.86 of 2017 and after filing of the same the respondents have filed another suit although under Special Marriage Act, but the relief sought for in both the suits are almost similar, therefore, in view of the provision of Section 10 of the CPC the suit in between the parties is going on, the subsequent suit is required to be stayed in view of the provision of Section 10 of the CPC. The said aspect of the matter has not been considered by the trial court, without dealing with the scope of Section 10 of the CPC which provides the object of the said provision is to avoid the multiplicity of proceeding, if the two suits are going on in between the same parties pertaining to the same dispute.

Considering the aforesaid submission, this Court is of the view that the matters require consideration.

In view thereof, let notice be issued upon the respondent within a week.

Notice is made returnable on 13.11.2019.

**Ad Interim**

Learned counsel for the petitioner has prayed for stay of the further proceeding in O.S. No.559 of 2018.

The proceeding of the O.S. No.559 of 2018 is for physical appearance of the petitioner for taking efforts for reconciliation and further proceeding. According to him the efforts of the conciliation has also been resorted to Mat. Suit No.86 of 2017 but the reconciliation fails and now the matter is proceeding for adjudication of the merit. Further submission has been made that since the petitioner is lady living in the Jhargram falling in the State of West Bengal and if the further proceeding in O.S. No.559 of 2018 will not be stayed, the petitioner will have to come to the court functioning at Jamshedpur in the State of Jharkhand and furthermore keeping the object and spirit of the Section 10 of the C.P.C., the O.S. No.559 of 2018 if not stayed, the petitioner will suffer irreparable loss.

This Court after hearing learned counsel for the petitioner on this point, is of the view that the petitioner has been able to make out a prima facie case and the scope of Section 10 of the C.P.C as also the balance of convenience lies in her favour otherwise the petitioner will have to appear in the court having jurisdiction at Jamshedpur and if the further proceeding would not be stayed in O.S. No.559 of 2018, the petitioner will suffer irreparable loss.

Keeping the aforesaid view, this Court is of the view that further proceeding in O.S. No.559 of 2018 be stayed.

Accordingly the further proceeding in O.S. No.559 of 2018 is stayed till the next date.

**(Sujit Narayan Prasad, J.)**