

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No.22 of 2009

Madhab Charan Swain

.....

Petitioner

Mr. Satyajit Mukherjee, Advocate

-versus-

Pravati Kumari Swain

....

Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

23.06.2022

Order No.

11. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this RPFAM seeks to assail the order dated 6th January, 2009 (Annexure-3) passed in Cr.P No.589 of 2006, whereby learned Judge, Family Court, Cuttack directed that the petition for stay of the execution proceeding will be considered on deposit of 50% of the arrear maintenance.
3. Mr. Mukherjee, learned counsel for the Petitioner submits that the Opposite Party is the legally married wife of the Petitioner. She had filed Cr.P. No.302 of 2001 under Section 125 Cr.P.C. in which learned Judge, Family Court, Cuttack, vide his order dated 18th June, 2005 (Annexure-1) awarded a monthly maintenance of Rs.1,000/- to be paid by the Petitioner to her. It is submitted that the said order was passed ex-parte without serving notice on the Petitioner. Thus, the Petitioner could not know about the same. The Petitioner is a

poor man and is not in a position to pay the arrear dues. For non-payment of arrear dues, the Opposite Party initiated Cr.P. No.589 of 2006. On receipt of notice in the said Execution Case, the Petitioner appeared and prayed for stay of the execution proceeding to enable him to assail the ex-parte order. Learned Judge, Family Court, Cuttack, on consideration of materials on record and submission of learned counsel for the parties, passed the impugned order. Hence, this RPFAM has been filed.

4. Although service of notice on the Opposite Party is sufficient none appears on her behalf.

5. Taking into consideration the submission made by learned counsel for the Petitioner and on perusal of the case record, it is apparent that the ex-parte order of maintenance passed on 18th June, 2005 in Criminal Proceeding No.302 of 2001 has not yet been challenged and is still in force. Thus, the Petitioner is liable to pay the maintenance in terms of the said order. Learned Judge, Family Court, Cuttack, taking into consideration the capacity of the Petitioner to pay the arrear maintenance and requirement of the Opposite Party to maintain herself, directed that the petition for stay of the execution proceeding will be considered on payment of 50% of the arrear amount. As it appears, the Petitioner has not complied with the said order.

6. This Court while issuing notice in the matter, by order dated 15th September, 2009, as an interim measure directed that there shall be stay of further proceeding in Criminal Proceeding

No.589 of 2006 pending in the Court of learned Judge, Family Court, Cuttack till 16th November, 2009 subject to deposit of Rs.7,500/- from out of the arrear maintenance amount before the Executing Court. It was further directed that if the said amount is deposited, learned Judge, Family Court, Cuttack shall disburse the said amount of Rs.7,500/- in favour of the Opposite Party. On perusal of order sheets, it appears that the said interim order was not extended further.

7. Taking into consideration the submission of Mr. Mukherjee, learned counsel for the Petitioner and in the fact and circumstances of the case stated above, I am of the considered opinion that the learned Judge, Family Court, Cuttack has not committed any error in passing the impugned order.

8. Accordingly, the impugned order dated 6th January, 2009 (Annexure-3) passed in Cr.P No.589 of 2006 is confirmed and in the result, the RPFAM stands dismissed.

(K.R. Mohapatra)
Judge