

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.5367 OF 2022

Bijay Laxmi Nanda

.....

Petitioner

Mr. Goutam Kumar Acharya,
Senior Advocate

-versus-

Debasis Nanda

....

Opp. Party

Mr. Ananta Narayan Pattanayak,
Advocate

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

ORDER

17.05.2022

Order No.

6. 1. This matter is taken up through hybrid mode.
2. This writ petition has been filed assailing the order dated 20th December, 2021 (Annexure-1) passed in I.A. No.75 of 2020 (arising out of C.P. No.88 of 2018), whereby learned Judge, Family Court, Cuttack dismissed the application filed by the Petitioner under Section 24 of the Hindu Marriage Act, 1955 (for short 'the Act') for *pendente lite* maintenance.
3. Mr. Acharya, learned Senior Advocate appearing for the Petitioner submits that the marriage between the Petitioner and Opposite Party was solemnized on 23rd June, 1999 as per Hindu Rites and Customs. Out of their wedlock, a girl child was born. Due to dissension in the marital life, C.P. No. 88 of 2018 has been filed by Opposite Party under Section 13(1) of the Act. The Petitioner on her appearance in the civil proceeding filed an application under Section 24 of the Act for *pendente lite* maintenance, which was dismissed vide order under Annexure-1. Hence, this writ petition has been filed.

4. Mr. Acharya, learned Senior Advocate further submits that the Petitioner had a reasonable income before outbreak of COVID-19. She has a building at Pallasuni, which was rented out as a Women's Hostel. After outbreak of COVID-19, the inmates left the Hostel for which the income of the Petitioner is drastically reduced. In order to maintain the building, the Petitioner has obtained a loan from the Bank to the tune of Rs.2,50,000/- and is repaying the installments regularly. After the situation normalized, she is getting a meager amount of Rs.14,000/- to Rs.15,000/- per month towards rent from the said building, which is not sufficient for her maintenance. In support of her income, the Petitioner filed income tax return, which discloses that her gross income for the financial year, 2020-21 was Rs.1,58,650/-, which shows that the Petitioner does not have sufficient means to maintain herself. Although the Opposite Party is providing a sum of Rs.30,000/- per month towards study expenses of their daughter, who is staying with her, but he is not providing any maintenance to the Petitioner for her sustenance. In that view of the matter, he prays for setting aside the impugned order and to direct the Opposite Party to pay *pendente lite* maintenance of Rs.2,00,000/- per month to the Petitioner.

5. In course of argument, Mr. Acharya, learned Senior Advocate appearing for the Petitioner submits that the annual income of the company of Opposite Party is Rs.11,45,850/-. Since the Opposite Party is the Managing Director of the said Company, it can be said to be the personal income of Opposite Party.

6. Mr. Pattanayak, learned counsel for the Opposite Party refuted such submission. It is his contention that as per the income tax return of Opposite Party for the financial year 2019-2020, the

annual income of Opposite Party is Rs.6,58,330/-, out of which he is repaying a Car loan of Rs.22,840/- per month. He further submits that out of monthly income of Rs.54,800/-, the Opposite Party has expenses of Rs.50,000/- including study expenses of Rs. Rs.30,000/- of their daughter. Thus, he does not have any sufficient means to provide further *pendente lite* maintenance to the Petitioner. The Petitioner has a three storied building, which is rented out and she earns a handsome amount out of that. It is his case that due to non-cooperation of the Petitioner, her defence was struck off. However, at present, the Opposite Party has led his evidence and the matter is posted for cross-examination of Opposite Party by the Petitioner. Without participating in the hearing of the case, this application has been filed at the fag end of the proceeding only to harass the Opposite Party. The impugned order under Annexure-1 is, therefore, just and reasonable and warrants no interference. Hence, he prays for dismissal of the writ petition.

8. Taking into consideration the rival contentions of the parties, this Court finds that the average income of Opposite Party is Rs.54,000/- per month. However, Mr. Pattanayak, learned counsel for the Opposite Party submits that monthly expenses of Opposite Party is Rs.50,000/- including study expenses which the Opposite Party is providing to his daughter, who is residing with her mother (Petitioner). It is admitted by learned counsel for the parties that the Opposite Party is providing a sum of Rs.30,000/- per month towards study expenses of their daughter. It is also admitted case of the parties that the Petitioner has a three storied building at Pallasuni, which was used as Women's Hostel. However, Mr. Acharya, learned Senior Advocate submits that after outbreak of

COVID-19, the building is no more being used as Women's Hostel and its income is reduced drastically.

9. From the copy of the income tax return of the Petitioner, it reveals that the annual income of the Petitioner is Rs.1,58,650/- for the financial year, 2020-21. On the other hand, it appears that the annual income of the Opposite Party is Rs.6,58,330/- for the financial year 2019-2020, which indicates that monthly income of Opposite Party was Rs.54,000/- for the financial year, 2019-2020. It further reveals from the case record that the Petitioner is capable of having an income towards rent from the building standing in her name.

10. Taking a comparative view of the income of the parties and their respective expenses together with the fact that the Opposite Party is paying a sum of Rs.30,000/- per month towards study expenses of their daughter, this Court feels that rejection of the application under Section 24 of the Act is not unjustified. Law is well settled that the mother (Petitioner) has also obligation to maintain her daughter. In view of the above, I am not inclined to interfere with the impugned order under Annexure-1. Accordingly, this writ petition is dismissed.

11. Parties are directed to cooperate with learned Judge, Family Court, Cuttack for early disposal of C.P. No. 88 of 2018.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

bks