

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 91 of 2018

Satish Agrawal

.....

Petitioner

Mr. Samir Kumar Mishra, Advocate

-versus-

Sudha Agarwal and another

....

Opp. Parties

Mrs. Supriya Patra, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

07.03.2022

Order No.

- 12.
1. This matter is taken up through Hybrid mode.
 2. The Petitioner in this RPFAM seeks to assail the order dated 28th July, 2017 (Annexure-6) passed by learned Judge, Family Court, Sambalpur in CMC No.54 of 2014, whereby a petition filed by the Petitioner under Section 126(2) Cr.P.C. for setting aside the *ex parte* order dated 23rd July, 2014 (Annexure-3) passed in CMC No.473 of 2012, was dismissed.
 3. It is submitted by Mr. Mishra, learned counsel that the Petitioner is the husband of Opposite Party No.1 and Opposite Party No.2 has been born out of their wedlock. As dissensions arose between the parties they started living separately. Subsequently, the Opposite Party No.1 filed CMC No.473 of 2012 under Section 125 Cr.P.C. Although the Petitioner was diligently participating in the proceeding, but due to personal difficulty he could not attend on some of the dates to which the case was posted before the learned Family Court, for which he was set *ex parte* and an order was passed directing him to pay

maintenance of Rs.20,000/- per month to the Opposite Party No.1 and Rs.10,000/- per month to Opposite Party No.2. The Petitioner thereafter filed CMC No.54 of 2014 to set aside the *ex parte* order granting maintenance to Opposite Parties, which was rejected vide order dated 28th July, 2017 (Annexure-6). Hence, this RPFAM has been filed.

3.1 It is his submission that Opposite Party No.1 has in the meantime joined the Odisha Judicial Service and has sufficient means to maintain herself and the child. The Petitioner at the time of filing of the application under Section 125 Cr.P.C. (CMC No.54 of 2014) was serving in WIPRO and subsequently he lost that job and now he is earning Rs.25,000/- per month. As such, it is practically impossible on the part of the Petitioner to pay maintenance granted in favour of Opposite Parties. He, however, submits that the Petitioner, if granted an opportunity, will diligently participate in the criminal proceeding. In that view of the matter, he prays for setting aside of the impugned order under Annexure-6 and to grant him an opportunity to participate in the proceeding under Section 125 Cr.P.C..

4. Mrs. Patra, learned counsel for Opposite Parties vehemently objected to the above submission. In course of hearing, she produces the order sheets in CMC No.473 of 2012. It is her submission that initially in course of the proceeding, the Petitioner herein appeared before learned Family Court on 2nd August, 2013 and filed a petition praying for adjournment to file show cause. Initially, adjournment was granted to the Petitioner. But, taking advantage of the same, the Petitioner sought for repeated adjournments. Since he had already been granted time on 25th June, 2013 to 2nd August, 2013, learned

Judge, Family Court rejected the petition, but granted opportunity to the Petitioner to take part in the hearing by filing show cause on the date fixed. The next date of hearing was fixed to 5th August, 2013. However, the Petitioner failed to appear before the learned Family Court and take part in hearing. Accordingly, he was set *ex parte* on 8th January, 2014. However, considering his application, the *ex parte* hearing was fixed on the said date. Subsequently, on a petition filed by the Petitioner, the *ex parte* order was recalled vide order dated 20th March, 2014 and the Petitioner was permitted to cross examine the Opposite Party No.1. But, the Petitioner miserably failed to comply with the direction of the Court. Ultimately, *ex parte* order of maintenance was passed. The Petitioner has not made out any case for setting aside of *ex parte* order. Although the Opposite Party No.1 is serving as a judicial officer, but she along with her daughter are entitled to maintain a life as per the status they would have maintained living with Petitioner. Hence, the impugned order needs no interference.

5. Taking into consideration the submissions made by learned counsel for the parties and that the Petitioner is now willing to participate in the hearing of the case, this Court feels that a further opportunity should be given to him to participate in the hearing of the case. It is submitted by Mr. Mishra, learned counsel for the Petitioner that show cause has already been filed in the criminal proceedings. Thus, the parties should be allowed to take part in the hearing of the case. But, for the loss to be suffered by the Opposite Parties, they should be adequately compensated.

6. In that view of the matter, order dated 28th July, 2017 (Annexure-6) passed in CMC No.54 of 2014 and *ex parte* order dated 23rd July, 2014 (Annexure-3) passed in CMC No.473 of 2012 are set aside subject to payment of cost of Rs.1.00 lakh (rupees one lakh only) to the Opposite Parties before the learned Family Court, Sambalpur.

7. In order to avoid further delay in the matter, parties are directed to appear before the learned Judge, Family Court, Sambalpur on 4th April, 2022 to receive further instruction in the matter. The cost, as directed above, shall be paid by the Petitioner to the Opposite Parties on that date. On payment of cost, as directed above, learned Judge, Family Court shall do well to proceed with the matter without granting any unnecessary adjournments. Parties are also directed to cooperate the learned Judge, Family Court, Sambalpur for disposal of the CMC 473 of 2012 as expeditiously as possible, preferably by end of September, 2022.

8. Needless to mention learned Judge, Family Court, Sambalpur is also at liberty to take coercive measure, if any of the parties fail to cooperate for early disposal of the aforesaid criminal proceeding.

9. With the observation and direction, as aforesaid, the RPFAM is disposed of.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge