

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No.66 OF 2015

Padmaja Patel

....

Appellant

Mr. D.K.Mohapatra, Advocate

-versus-

***Mohini Mohan Patel &
another***

....

Respondents

None

**CORAM:
JUSTICE S. TALAPATRA
JUSTICE M.S.SAHOO**

ORDER

05.09.2022

Order No.

- 2.** 1. This matter is taken up through hybrid mode.
2. Heard Mr. D.K. Mohapatra, learned counsel appearing for the appellant.
3. When the appeal, is taken up for hearing, there was no representation from the respondents, despite due notice.
4. By this appeal filed under Section 19(1) of the Family Courts Act, 1984, the appellant (wife) has challenged the judgment dated 26.01.2015 passed by the Judge, Family Court, Rourkela by granting monthly maintenance to the extent of Rs.12,000/- per month, payable on or before 10th day of each succeeding month with effect from the month of application, i.e., March, 2011. The appellant instituted a suit under Section 18 of the Hindu Adoption and Maintenance Act being Civil Proceeding No.74 of 2011 for such maintenance as the respondent no.1 had refused to maintain the appellant, even though she was forced to live separately. The essential facts those are required to be noted are that the appellant and the respondent no.1 have been living separately despite the appellant's endeavour to live

together. She had failed to have a peaceful conjugal life. In the petition filed under Section 18 of the Hindu Adoptions and Maintenance Act, it has been asserted that the appellant had some difficulty with inmates of the respondent no.1. She was being treated with cruelty in various forms and the appellant was compelled to leave separately from the matrimonial home. She filed the suit for having maintenance to the extent of Rs.20,000/-. It has been categorically asserted by the appellant that at that point of time the respondent no.1 was getting a salary of Rs.2,92,658/- and after various deductions, the respondent no.1 was drawing a net sum of Rs.1,05,563/-. This is evident from the salary certificate as obtained under the Right to Information Act. The said salary certificate has been admitted in the evidence as Ext.1. The Judge, Family Court having recorded the evidence, appreciated the same to observe as under:

“It can be said that there was certainly no congenial atmosphere for the petitioners to continue in the company of the respondent, for which they were forced to come away from the clutches of the respondent, so as to have at least a peaceful sleep in the night. Though there is allegation from the side of the petitioners that on account of the cruelty and ill treatment meted out by the elder brother of petitioner no.1 to the younger sister of the respondent, they were subjected to cruelty, no such material to convince the Court has been placed by them. Therefore, that allegation is not tenable. However, on a conspectus viewing of the matter, the Court arrives at a conclusion that there was no justifiable ground for the petitioners to come away from the house of the respondent, because the matter could have been amicably settled on the intervention of the elders, well wishers, friends and relatives of both parties, which perhaps they did not invite. Coming away from the house of the husband is not the solution, because

there was no threat to her life or imminent danger. Only out of ego clash, perhaps she has deserted her husband and the husband also being driven by the impulse of ego, did not take any step to bring the petitioners back. This finding the Court arrives from the evidence of the respondent, which is admitted by petitioner no.1 that he has been financing petitioner no.2 in Orissa Engineering College, Bhubaneswar. Therefore, there is certainly ego clash between the wife and the husband. Under the above circumstances, this issue is answered in negative.”

5. Having observed thus, part of which is wishful and to a greater extent irrelevant, the Judge, Family Court directed the respondent no.1 to pay the maintenance of Rs.12,000/- per month to the appellant (wife) on or before 10th day of each succeeding month with effect from March,2011. No maintenance was directed for the petitioner no.2, son of the appellant, in that suit and no appeal has been referred against the said direction by the said petitioner no.2.

6. We have been informed that the Petitioner No.2 has attained the age of 20 years. It is really unfortunate that while determining the quantum of the maintenance allowance, Ext.1-the salary certificate was not properly appreciated. From the said document produced in the proceeding being Civil Proceeding No.74 of 2011 [Ext.1], it appears that the respondents gross salary for the month of November,2011 was Rs.4,11,933/- including taxable and non-taxable income. But after deduction, the respondent no.1 was getting a net amount of Rs.1,00,904/-. Expectedly the salary of the respondent no.1 has gone up, as there was substantial pay revision in the Public Sector Undertakings (PSUs) after 2016.

7. The appellant has challenged in this appeal the finding of the Judge, Family Court as regards the quantification of the maintenance allowance. The Judge, Family Court has inferred that the conduct of the appellant has attributed in living separately. At the same time, it has been held by the Judge, Family Court that there was no congenial atmosphere in the matrimonial home. As such, we can safely perceive that the appellant did not have the congenial atmosphere to live in the matrimonial home. Therefore, by any stretch, it cannot be stated that the appellant deserted the respondent. On the contrary, we may infer that she was forced to leave the matrimonial home.

8. Having observed thus, we will appreciate what will be the amount of the monthly maintenance allowance in the case in hand. We have referred the income of the husband as reflected in Ext.1 for the month of November, 2011. If that is taken as the basis, according to us, and having regard to the standard of life the appellant was accustomed in her matrimonial home, the maintenance allowance should be much more. All the three factors which usually the Courts consider for consideration are:

- (i) the income or the financial resource of the persons who is supposed to give maintenance;
- (ii) the standard of life; and
- (iii) the need of the person who is to receive the maintenance allowance.

9. We would proceed to appreciate the quantification. We would like to lay down that while quantifying the amount of maintenance allowance, the need is one of the

three factors. The appellant herein claimed a sum of Rs.20,000/- per month in the year 2011. We should observe that the need as expressed by the person seeking the maintenance, cannot limit the proper assessment of the maintenance allowance.

10. Having regard to all the factors, as aforementioned, we direct the respondent no.1-husband, who is not represented before us, to pay the maintenance allowance of Rs.25,000/- (Rupees twenty five thousand) per month to the appellant, payable within 10th day of every succeeding month. This amount shall be payable from the month of September,2022. Ordered accordingly.

11. For the foregoing reasons, this appeal stands allowed.

12. Decree be drawn accordingly. LCRs, if received, be sent down.

Urgent certified copy be granted as per Rules.

(S. Talapatra)
Judge

(M.S. Sahoo)
Judge