

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 5978 of 2022

Paresh Kumar Parichha

.....

Petitioner

Mr. Budhiram Das, Advocate

-versus-

Anita Kumari Parichha

....

Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

15.03.2022

Order No.

2. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition seeks to challenge the order dated 10th December, 2021 (Annexure-1) passed by learned Judge, Family Court, Parlakhemundi in Execution Petition No.8 of 2014.
3. Mr. Das, learned counsel for the Petitioner submits that learned Civil Judge Senior Division), Parlakhemundi in MJC No.16 of 2002 filed by the decree holders (wife and child of the Petitioner), awarded a monthly maintenance of Rs.1,000/- under Section 24 of the Hindu Marriage Act, 1955 vide his order dated 11th October, 2002. Subsequently, MAT Case No.25 of 2012 was filed for enhancement of the maintenance. Upon hearing learned counsel for the parties, learned Civil Judge Senior Division), Parlakhemundi, vide judgment dated 22nd April, 2013 enhanced the amount by Rs.5,000/- per month over and above the maintenance of Rs.1,000/- per month already awarded vide MJC No.16 of 2002. Said order was carried in appeal in MAT Appeal No.4 of 2013 before the learned District Judge, Parlakhemundi, who upheld the order

passed in MAT Case No.25 of 2012. Thereafter, the present Petitioner filed RSA No.130 of 2014, which was dismissed vide order dated 8th April, 2021. Accordingly, the decree holders filed Execution Petition No.8 of 2014 for realization of Rs.1,12,000/- towards arrear maintenance. Vide order dated 10th December, 2021, learned Judge, Family Court, Parlakhemundi at Gajapati directed the present Petitioner to pay the amount of Rs.1,12,000/- by 20th December, 2021. Assailing the said order, the Petitioner has filed this writ petition.

4. It is contended by Mr. Das, learned counsel for the Petitioner that in MAT Case No.25 of 2012, the maintenance was enhanced to Rs.5,000/-. Thus, the executing Court committed error in calculating maintenance at Rs.6,000/- per month. The Executing Court probably included the maintenance of Rs.1,000/- per month awarded earlier in MJC No.16 of 2002. It is his submission that by virtue of order dated 22nd April, 2013 passed in MAT Case No.25 of 2012, the order passed in MJC No.16 of 2002 merged with the same. As such, the decree holders are entitled to maintenance of Rs.5,000/- per month and not Rs.6,000/- per month, as calculated by the executing Court. Hence, he prays for setting aside the impugned order under Annexure-1 passed by learned Judge, Family Court, Parlakhemundi in Execution Petition No.8 of 2014.

5. Upon hearing learned counsel for the Petitioner and on perusal of the impugned order, it appears that earlier learned Civil Judge (Senior Division), Parlakhemundi has awarded a sum of Rs.1,000/- per month under Section 24 of the Hindu Marriage Act in MJC No.16 of 2002. Subsequently, on an application filed by the decree holders in MAT Case No.35 of

2012, the said amount was enhanced by Rs.5,000/- per month, which means the decree holders are entitled to a further sum of Rs.5,000/- per month over and above Rs.1,000/- per month already awarded in MJC No.16 of 2002. This fact has already been clearly indicated in the impugned order dated 10th December, 2021 passed in Execution Petition No.8 of 2014. It further appears that such a plea was neither taken in MAT Appeal No.4 of 2013 nor in RSA No.130 of 2014, as fairly admitted by Mr. Das, learned counsel in the present writ petition. Therefore, there is no scope for interference with the impugned order under Annexure-1 passed in Execution Petition No.8 of 2014.

6. Accordingly, the writ petition fails being devoid of any merit and as such the same is dismissed.

(K.R. Mohapatra)
Judge

s.s.satapathy