

**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**RPFAM No. 41 OF 2022**

***Ashok Nayak***

.... ***Petitioner***

Mr. Subrat Kumar Nayak, Advocate

-versus-

***Kanaklata Nayak***

.... ***Opp. Party***

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

**ORDER**

**24.08.2022**

**Order No.**

2. 1. This matter is taken up through hybrid mode.
2. 2. The Petitioner in this RPFAM seeks to assail the order dated 25<sup>th</sup> November, 2021 (Annexure-4) passed by learned Judge, Family Court, Rourkela in Criminal Proceeding No.22 of 2021, whereby he directed to recover a sum of Rs.30,000/- per month from the salary of the Petitioner to realize the arrear maintenance of Rs.11,70,000/-.
3. 3. It is submitted by Mr. Nayak, learned counsel for the Petitioner that due to his illness, the Petitioner could not appear before learned Judge, Family Court, Rourkela on the date fixed. But without considering the same, the impugned order under Annexure-4 has been passed. Subsequently, the prayer made by the present Petitioner to stay of further proceeding in Criminal Proceeding No.22 of 2021 under Section 125 (3) Cr.P.C. till disposal of Crl.P No.43 of 2021 under Section 126(2) (arising out of Crl.P No.31 of 2015, under Section 125 Cr.P.C.) has not been considered.

4. Taking into consideration the submission of Mr. Nayak, learned counsel for the Petitioner that the Petitioner could not appear on the date fixed due to his illness, this Court is of the considered opinion that the Petitioner ought to have raised this plea before learned Judge, Family Court, Rourkela by filing appropriate application before approaching this Court in assailing the order dated 25<sup>th</sup> November, 2021 under Annexure-4.

5. In view of the above, this Court disposes of the RPFAM with an observation that the Petitioner, if so advised, may file appropriate application for recall/modification of the order dated 25<sup>th</sup> November, 2021 under Annexure-4, which may be considered in accordance with law.

6. It is made clear that this Court has not expressed any opinion on the merit of the case of the Petitioner in this RPFAM.

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

**(K.R. Mohapatra)**  
**Judge**