

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 19256 OF 2016

Monali Priyadarshini Dash

....

Petitioner

Mr. Anam Chandra Panda, Advocate

-versus-

Suresh Kumar Pati

....

Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

22.11.2022

Order No.

- 03.
1. This matter is taken up through hybrid mode.
 2. The order dated 11th August, 2016 (Annexure-4) passed by the learned Family Court, Cuttack in I.A. No. 180 of 2015 (arising out of C.P. No. 953 of 2011) is under challenge in this writ petition, whereby allowing an application under Section 24 of the Hindu Marriage Act, 1955, the Opposite Party has been directed to pay *pendente lite* maintenance @ Rs. 5,000/- per month to the Petitioner.
 3. Mr. Panda, learned counsel for the Petitioner submits that the Opposite Party at the relevant time was serving as Junior Manager in Nilachal Ispat Nigam Ltd, Jajpur. He was drawing a salary of Rs.46,104/- per month. Assailing an order passed by the learned SDJM, Jharsuguda under the provision of Protection of Women from Domestic Violence Act, 2005 the Opposite Party had moved this Court in CRLMC No. 4032 of 2011. Pursuant to the direction of this Court, the matter was referred for mediation. After a successful mediation the Opposite Party

agreed to take back the Petitioner and take responsibilities to maintain her. Amongst other, it was also agreed that as a token of respect and affection towards his wife, the Opposite Party will open a savings bank account in her name and will deposit a sum of Rs.10,000/- per month. But, the Opposite Party never opened any such account and deposited money as agreed upon. Although these materials were placed before learned Judge, Family Court, Cuttack, the impugned order under Annexure-4 has been passed without considering the same. Hence, the impugned order under Annexure-4 is not sustainable in the eyes of law.

4. Mr. Panda, learned counsel for the Petitioner further submits that when the Opposite Party had agreed to pay Rs. 10,000/- per month to the Petitioner, learned Judge, Family Court, Cuttack should not have passed an order directing the Opposite Party to pay a meager amount of Rs.5,000/- per month to the Petitioner. Hence, he prays for enhancement of the *pendente lite* maintenance.

5. Although notices were issued in the matter to the Opposite Party, but none appears on his behalf.

6. Taking into consideration the submission made by the learned counsel for the Petitioner and on perusal of the Mediation Report annexed to the writ petition as Annexure-2, it is apparent that the Opposite Party had agreed to open a savings banks account in the name of the Petitioner and to deposit Rs.10,000/- per month in the said account. It further appears that the monthly salary of the Opposite Party at the relevant time was Rs.46,104/-. Although Mr. Panda, learned counsel for the

Petitioner submits that these materials were placed before learned Judge, Family Court, Cuttack at the time of adjudication of the petition under Section 24 of the Act, but it appears that learned Judge, Family Court, Cuttack has not taken the same into consideration.

7. In view of the above, this Court feels that the matter requires fresh consideration.

8. Accordingly, this Court while setting aside the impugned order under Annexure-4, remits the matter back to learned Judge, Family Court, Cuttack to reconsider the quantum of *pendente lite* maintenance giving opportunity of hearing to the parties concerned. It is made clear that till disposal of the petition under Section 24 of the Act afresh, the Opposite Party shall go on paying Rs. 5,000/- (Rupees five thousand) per month as *pendente lite* maintenance to the Petitioner.

9. The writ petition is disposed of accordingly.

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

(K.R. Mohapatra)
Judge