

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 7809 OF 2020

Mamata Nayak @ Debnath and others* *Petitioners

Mr. S.S.K. Nayak, Advocate

-versus-

Alok Nayak

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

Mr. Arjeet Mishra, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

01.08.2022

Order No.

- 7.
1. This matter is taken up through hybrid mode.
 2. The Petitioners in this writ petition assail the order dated 26th November, 2019 (Annexure-4) passed by learned Judge, Family Court, Kendrapara in I.A. No.13 of 2019, whereby he allowed the application filed by the Petitioners directing the Opposite Party to pay *pendente lite* maintenance of Rs.2,000/- per month to the Petitioner No.1 and Rs.1,000/- per month to the Petitioner No.2 from the date of filing of the petition i.e. 15th April, 2019.
 3. Mr. Nayak, learned counsel for the Petitioners submits that the Petitioner No.1 is the legally married wife of the Opposite Party and Petitioner No.2 is their son. Because of marital discord, the Opposite Party has filed an application under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') for dissolution of marriage between the Petitioner No.1 and Opposite Party by a decree of divorce. The Petitioners on their appearance filed an application under Section 24 of the Act for *pendente lite* maintenance. Marriage between the parties is not disputed. It is also not disputed that the Petitioner No.2 born out of their wedlock. The Opposite Party is serving as a Constable under the

Odisha Police. However, learned Judge, Family Court, Kendrapara without considering the matter in its proper perspective, has granted a meager amount of Rs.2,000/- per month to the Petitioner No.1 and Rs.1,000/- per month to the Petitioner No.2 towards *pendente lite* maintenance.

4. Mr. Nayak, learned counsel for the Petitioners submits that Petitioner No.2 has become four years old at present and started going to school. Thus, it is very difficult on their part to sustain livelihood with the meager amount of *pendente lite* maintenance. It is also submitted that without paying the interim maintenance, the Opposite Party filed an application for withdrawal of the civil proceeding, which has been rejected. He, therefore, submits that the *pendente lite* maintenance requires enhancement.

5. Mr. Mishra, learned counsel for the Opposite Party submits that marriage between the parties is not disputed. He also submits that the Petitioner No.2 is born out of their wedlock. He further admits that the Opposite Party is serving as a Constable under the Odisha Police. He, however, contended that the Petitioner No.2 being their son is not entitled to any maintenance under Section 24 of the Act. The Opposite Party has various ailments. He has his ailing parents to maintain. Learned Judge, Family Court, Kendrapara taking into consideration the submission made by learned counsel for the parties, more particularly, the ailment of the Opposite party and expenses towards medicines and treatment as well as amount required for maintenance of his ailing parents has passed the impugned order. Hence, the impugned order under Annexure-4 warrants no interference.

6. Taking into consideration the rival contentions of the parties, it is worthwhile to mention that the Petitioner No.2 is not entitled to any maintenance under Section 24 of the Act. However, the order impugned herein is not challenged by the Opposite Party. It is not disputed that the Opposite Party is serving as a Constable under the Odisha Police. Of course, he is suffering from various ailments and requires money for his treatment and medicines. It also appears that the Opposite Party has his ailing parents who are residing with him and he is taking care of them. Be that as it may, since the Opposite Party is serving as a Constable and a meager amount of Rs.2,000/- per month has been awarded to the Petitioner No.1, this Court feels that the same requires consideration by enhancing the amount.

7. Taking into consideration the facts and circumstances of the case, this Court feels that an amount of Rs.4,000/- (Rupees four thousand only) per month as *pendente lite* maintenance to Petitioner No.1 will be just and reasonable to meet the ends of justice. Accordingly, the impugned order under Annexure-4 is modified to the extent that the Opposite Party shall pay a sum of Rs.4,000/- per month (Rupees four thousand only) to the Petitioner No.1 as *pendente lite* maintenance with effect from the date of filing of application i.e. 15th April, 2019.

With the aforesaid observation and direction, the writ petition is disposed of.

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

(K.R. Mohapatra)
Judge