

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.2331 OF 2017

Ranjan Kumar Routray ***Petitioner***

Mr.J.R. Dash, Advocate

-versus-

Madhumita Mohanty ***Opp. Party***

Mr. Biswaranjan Mohanty, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
27.10.2022

Order No.

1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ Petition seeks to assail the order dated 6th October, 2016 (Annexure-1) passed by learned Judge, Family Court, Bhubaneswar in Execution Case No.32 of 2015, whereby an order of attachment of movable and immovable properties was issued for execution of the decree.
3. It is submitted by Mr. Dash, learned counsel for the Petitioner that in a matrimonial suit, permanent alimony of Rs.40,00,000/- has been directed to be paid by the Petitioner to the Opposite Party. In addition to the permanent alimony, a direction for return of dowry articles was also made in the decree of dissolution of marriage. Assailing the quantum of permanent alimony, the Petitioner had preferred appeal in which it was modified to Rs.35,000/-. Since the Petitioner could not pay the permanent alimony, Execution Case No. 32 of 2015 has been initiated. During pendency of the execution case, the D.Hr.- Opposite Party filed an application for attachment of property of the Petitioner for recovery of Rs.35,00,000/- towards permanent

alimony and Rs.5,00,000/- towards cost of materials. It is further submitted by Mr. Dash, learned counsel that without providing any opportunity hearing to the Petitioner, the order of attachment has been passed. It is his submission that though there is an observation in the impugned order to the effect that in spite of loud calls, the J.Dr.-Petitioner did not appear. but, practically there was no loud call as observed. In that regard, he had filed an application to recall the impugned order, but the prayer of the Petitioner was turned down. The Petitioner also filed an objection on 26th December, 2016 to the order of attachment on the ground that the impugned order is void and does not exist in the eyes of law. Before proceeding for attachment, the Court should have complied with the provisions under Order XXI Rule 41 C.P.C. But, without following any procedure of law, the Court has passed the order of attachment. The Petitioner is an unemployed person and has no source to pay the decretal amount. He, therefore, prays for setting aside the impugned order and to remit the matter back to the learned Judge, Family Court, Bhubaneswar to provide an opportunity to the Petitioner to put-forth his case.

4. Mr. Mohanty, learned counsel for the Opposite Party objecting to the submission made by learned counsel for the Petitioner contended that immediately after the interim order dated 9th February, 2017 was passed by this Court in Misc. Case No. 1947 of 2017, the Petitioner sold away his movable properties, i.e. Taxi bearing Registration No.OR02AC2687, Truck bearing Registration No.OR-13-4776, Tractor bearing Registration No.OR02ASO6087 and Trailer bearing

Registration No.OR02ASO688. Out of three immovable properties, two properties stand in the name of the Petitioner exclusively. He further submits that the Petitioner was given opportunity of hearing, but he avoided to participate in the execution proceeding. On the date of hearing, in spite of repeated calls, the Petitioner did not appear. Hence, learned executing Court has passed the order of attachment.

5. Considering the submissions made by learned counsel for the parties and on perusal of the case record, it appears that assailing the order dated 6th October, 2016, the Petitioner had already filed an application for recall of the same, but it was turned down as admitted by learned counsel for the Petitioner in Paragraph-3 of the writ petition. It further appears that objection to the order dated 6th October, 2016 was filed on 26th December, 2016 stating it to be void and not executable. As the order of attachment has already been passed, no further objection dated 26th December, 2016 could have been entertained by learned Family Court. On Perusal of the impugned order, it appears that the J.Dr.-Petitioner was absent in spite of repeated calls.

6. In course of hearing, Mr. Dash, learned counsel for the Petitioner submits that assailing the order directing the Petitioner to pay permanent alimony, he had filed an appeal, which has already been dismissed. However, a review petition is pending. Pendency of the review petition cannot be a stumbling block in executing the order of permanent alimony as well as recovery of cost of materials. Since the Petitioner was absent on repeated calls but learned trial Court had no other option than to proceed with the matter and passed the order of attachment. It further

reveals that petition for recall of order of attachment was rejected. But, the said order was never challenged.

7. Order XXI Rule 41 C.P.C. is discretionary one, which can be exercised on filing an application by the D.Hr.-Opposite Party. Since the D.Hr.-Opposite Party has not resorted to the said provision, learned Judge, Family Court, Bhubaneswar is not required to exercise power under the said provision.

8. In view of the above, I find no infirmity in the impugned order. Accordingly, the writ petition being devoid of any merit stands dismissed.

9. The interim order dated 9th February, 2017 passed in Misc. Case No.1947 of 2017 stands vacated.

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

(K.R. Mohapatra)
Judge

bks/sn