

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No. 102 of 2014

Chanchala Behera

....

Appellant

Mr. J.K.Khuntia, Advocate

-versus-

Kailash Chandra Behera

....

Respondent

Mr. B.S.Panigrahi, Advocate

CORAM:

JUSTICE S. TALAPATRA

JUSTICE M.S.SAHOO

ORDER

3.8.2022

Order No .

14 1. This matter is taken up through hybrid mode.

2. This appeal has been filed under section 19(1) of the Family Courts Act, 1984 challenging the judgment dated 7.2.2014 delivered in Civil Proceeding No. 143 of 2011 by the Judge, Family Court, Rourkela. It has been held by the said judgment that the enhancement sought under section 25 of the Hindu Adoption and Maintenance Act, 1956 in respect of two sons is not maintainable as Section 25 of the Hindu Adoption and Maintenance Act, 1956 provides that the amount of maintenance, whether fixed by a decree of court or by agreement, either before or after the commencement of this Act, may be altered subsequently if there is a material change in the circumstances justifying such alteration. Both the sons have attained majority before filing of the said enhancement application. There is no dispute in this regard.

3. Even rejection of their claim has not been challenged by the appellant herein. From the judgment and the enhancement application, it further surfaces that the appellant made prayer for enhancement of her maintenance from Rs.2,000/- per month as granted in the former proceeding to Rs.3,000/- per month. The Judge, Family Court having taken into consideration the relevant factors has determined the

enhancement at Rs.5,000/- per month for the appellant. Now the appellant being aggrieved by the said determination, has filed this petition.

4. Mr. J.K.Khuntia, learned counsel appearing for the appellant has submitted that from the affidavit filed by the respondent on 1.8.2022, it would be apparent that the appellant was receiving salary of Rs.49,668/- per month. According to Mr. Khuntia, learned counsel, the said statement is based on the bill that was submitted to the treasury for payment. The gross salary of the petitioner is more than Rs.1 lakh. Learned counsel appearing for the respondent Mr. B.S.Panigrahi has submitted that the arrears of maintenance, calculating the same at Rs.3000/- per month, has been paid by the respondent. But Mr. Khuntia, learned counsel has categorically submitted that the appellant has not paid the maintenance at the enhanced rate. According to Mr. Panigrahi, learned counsel, since the appellant has claimed enhancement to Rs.3000/- per month, the appellant is estopped from raising further claim on account of maintenance. That apart Mr Panigrahi has contended that the respondent has borne some expenses for medical attendance of one of the sons. Mr. Panigrahi, learned counsel has contended further that after decree of divorce was issued, the respondent has lawfully contracted the second marriage and he has two children from the said marriage. Therefore, he is also to take care of the financial requirement of the family including the wife and the children from the new marriage.

5. Thus, two pertinent point falls for consideration in this appeal viz. (i) whether the appellant has been estopped to claim further enhanced maintenance as she claimed in the application only a sum of Rs.3000/-; and (ii) whether the maintenance as granted by the Judge, Family Court by the

impugned order, can further be enhanced considering the income of the husband, the requirement for having a decent livelihood and conduct of the husband.

6. It appears from the records that husband (the respondent), has not come forward to maintain the appellant and her two children. As a result, they had to approach the Court for granting the maintenance. The Court had directed to pay the maintenance at the rate of Rs.2000/- to the appellant and Rs.1000/- for the sons. But in the changed circumstances, as effected by the enhanced financial position of the respondent and the devaluation money for the price hike, the appellant has approached the Judge, Family Court, Rourkela for enhancing the said maintenance allowance in exercise of the authority, concerned by section 25(2) of the Hindu Adoption and Maintenance Act, 1956. Finally, the said maintenance has been enhanced from Rs.2000/- to Rs.5000/-. Finding the same as inadequate, this appeal has been filed. It has been urged that reassessment of maintenance under section 25 of the Hindu Adoption and Maintenance Act, 1956 is essentially warranted for achieving the object of the statute.

7. We have considered the submissions of the learned counsel for the parties. We are persuaded to believe the statement of Mr. Khuntia, learned counsel that the respondent's gross income will be about Rs.1 lakh as he had been holding the position of Asst. Executive Engineer, Roads & Building Division, Sonapur. But it is equally true that after deduction, he has been getting only Rs.49,668/- as evinced from the treasury bill for the month of March, 2022. The question as raised by Mr. Panigrahi that since the appellant herself claim Rs.3000/-, she cannot be allowed to claim more cannot be sustained inasmuch as Section 23 of the Hindu Adoption and Maintenance Act, 1956 clearly provides that it shall be in the

discretion of the Court to determine the way, if so, what, maintenance shall be awarded under the provision of the Hindu Adoption and Maintenance Act, 1956 and in doing so, court shall take the due regard to the considerations set out in sub-section (2) and/or sub-section (3) as the case may be, so far as they are applicable. Sub-section (2) of Section 23 of the Hindu Adoption and Maintenance Act, 1956 is reproduced for better reference :

“(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to—

(a) the position and status of the parties;

(b) the reasonable wants of the claimant;

(c) if the claimant is living separately, whether the claimant is justified in doing so;

(d) the value of the claimant's property and any income derived from such property, or from the claimant's own earnings or from any other source;

(e) the number of persons entitled to maintenance under this Act.”

Sub-section (3) of section 23 of the said Act gives a direction how to evaluate and how to assess the maintenance. Hence, the submission of Mr. Panigrahi, learned counsel cannot be sustained as it is the discretion of the court to determine the maintenance allowance having due regard to *considerations* as delineated by sub-sections (2) & (3) of Section 23 of the Hindu Adoption and Maintenance Act, 1956. Now, the solitary question that is left to be considered is what would be just quantum in the present circumstances. For this purpose, we have considered the status of the parties and the reasonable need of the appellant. When we talk about the reasonable need, that should include the liability that the appellant has to discharge towards funding the educational expenses. But we cannot also be oblivious that the respondent has entered into his second marital life. From that wedlock,

the respondent has the two children. Therefore, the income should rightly be taken at Rs.50,000/- per month. The gross salary of the respondent is much more. Having considered thus, we are of the view that a sum of Rs.12000/- will be right amount of maintenance for the appellant. The respondent is therefore directed to pay the enhanced amount of Rs.12,000/- per month from 1st August, 2022. For the period prior to that, the respondent shall pay the enhanced maintenance allowance at the rate of Rs.5000/- to the appellant after deducting the amount as already paid. The arrear maintenance on the basis of the maintenance allowance at Rs.5000/- be paid within a period of six months from 1st August, 2022 in six instalments, meaning, the entire arrear maintenance shall be paid by 31st January, 2023. It is made clear that payment of the arrear maintenance by instalment is in addition to the monthly maintenance as has been determined at Rs.12,000/-. The monthly maintenance at Rs.12,000/- be paid within 10th day of every English calendar month. Failure in payment, would invite stern action from the Court and in that event, punitive action may also be taken against the respondent [the former husband of the appellant]. That apart, we would also direct the respondent to pay the additional sum of Rs.10,000/- as litigation expenses to the appellant.

In the result, the appeal stands allowed to the extent as indicated above. Decree be drawn accordingly.

LCR be sent down thereafter. The pending applications, if any, stand disposed of.

(S.Talapatra)
Judge

(M.S.Sahoo)
Judge