

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.560 of 2019

In the matter of an application under Article 227 of the Constitution of India, 1950.

Jyostnarani Khatua

....

Petitioner

Versus

Samir Ranjan Behera

.... **Opposite Party**

For Petitioner

...

Mr.R.K.Satpathy, D.Dash,

S.K.Kanungo, Advocate

Arguing Counsel-Mr.Lalit Mishra.

For Opposite Party

...

M/s. M.Pihan, Advocate

J U D G M E N T

PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing: 15.02.2022

Judgment:04.03.2022

Biswanath Rath, J. This C.M.P. is filed by the wife-Petitioner seeking appropriate direction for granting appropriate monthly maintenance in her favour in setting aside the order dated 17.04.2019 passed by the learned Judge, Family Court, Jagatsinghpur in I.A. No.284 of 2018 arising out of C.P. No.54 of 2016.

2. Brief fact involving the case is that the wife-Petitioner married the husband-Opposite Party on 17.02.2009. After solemnization of marriage both the husband and wife stayed together at Mumbai. At the time of marriage the husband was working as AGM, Grade-C in Reserve Bank of India, Mumbai and after some time the wife also got a job at Mumbai in UTI Infrastructure Technology and Services Ltd. with Rs.50,688/- salary per month. While the matter stood thus, on being transferred to Bhubaneswar the husband instituted a Civil Proceeding bearing C.P. No.54 of 2016 U/s.13 of the Hindu Marriage Act involving various allegations against the wife-Petitioner. Upon receipt of notice in the proceeding under Section 13 of the Hindu Marriage Act, the wife on her appearance resisted all the allegations made therein. During pendency of the aforesaid proceeding the wife-Petitioner filed an application U/s.24 of the Hindu Marriage Act before the learned Judge, Family Court, Jagatsinghpur seeking monthly interim maintenance as well as litigation expenses. In filing application under Section 24 of the Hindu Marriage Act, wife while disclosing that she is also an earner being an employee under UTI Infrastructure Technology and Services Ltd., in claiming monthly maintenance at least @ Rs.30,000/- and

Rs.3,00,000/- towards litigation expenses, the wife in paragraph-5 claimed the husband being an Officer in Reserve Bank of India is getting monthly salary around Rs.1,30,000/- per month. In support of her case, the wife has also disclosed in paragraph-4 that her earning is at a very lower side and for desertion by husband she is compelled to take independent accommodation. For her accommodation purpose in the city like Bombay, claimed she is not only required to spend a sum of Rs.16,000/- towards house rent further a sum of Rs,3,000/- towards electricity charges, besides, she used to spent a sum of Rs.1,500.- at least per day towards car hiring charges to move between her rented house and office premises.

3. It appears, on being noticed in the Section 24 of the Hindu Marriage Act proceeding instituted by the wife-Petitioner the husband-Opposite Party appearing therein averred that though the marriage between them is admitted, the wife-Petitioner put the husband into untold harassment and misbehaved causing physical and mental torture to him. It is further claimed by the husband therein that the expenses narrated by the wife-Petitioner was more exaggerated and due to the torture imparted by the wife Petitioner,

he got compelled to institute the aforesaid civil proceeding under the Hindu Marriage Act.

4. From the objection of the husband to the proceeding under Section 24 of the Hindu Marriage Act, it appears, while husband claiming the wife earning a sum of Rs. 65,000/- per month but husband did not volunteer regarding his income nor disputed the submission of the wife on his income. The trial court coming to consider the rival claims, by the impugned order dated 17.04.2019 however decided the matter solely on the basis of a decision of the Hon'ble Apex Court in the case of ***Kalyan Dey Chowdhury -Vrs.- Rita Dey Chowdhury***, reported in *AIR 2017 (SC)2383* where in paragraph-16 the Hon'ble Apex Court appears to have held that there should not be grant of maintenance less than 25% of the monthly salary of the husband. It is here taking this decision into account and keeping in view the salary earned by the wife, the trial court has come to observe since the wife is already in the earning of more than 25% of the husband's income, she need not be entitled to any further maintenance.

5. Challenging the aforesaid order in the refusal of the interim maintenance in favour of the wife, Mr.Mishra, learned counsel appearing on behalf of the petitioner taking this Court to the

grounds in the Civil Miscellaneous Petition submitted that undisputedly both the wife and husband are earners. It is claimed that the husband is earning a sum of Rs.1,30,000/- and the wife is earning Rs.50,000/- and odd both per month as their salary. It is made clear that for the separation between wife and husband, the wife is not only required to spend towards house rent, electricity charges and independent travelling expenses and if these expenses are taken into account, there should not remain any doubt that the wife is maintaining a life of inferior standard than the husband. For the settled position of law, Mr.Mishra, learned counsel for the petitioner contended that there is no difficulty in taking into account the income of the wife but while considering the question of grant of interim maintenance in case of an employed wife, the income and maintenance of standard of life by both should also be kept in mind. Mr.Mishra, learned counsel while claiming wrong application of Hon'ble apex Court, decision by the trial court on the basis of present income of the husband to be Rs.2,54,540/- per month from July, 2021 submitted that paramount consideration of Court to say that wife is maintaining equal standard of life and wife's meager income should not come into way of granting her interim maintenance. In the circumstance Mr. Mishra, learned

counsel urged this Court while interfering in the impugned order so far it relates to non-grant of interim maintenance this Court grant reasonable interim maintenance to the wife involved.

6. It is taking this Court to the decision referred by the trial Court, Mr.Mishra, learned counsel for the petitioner contended that the impugned order becomes bad on the premises that there has been wrong consideration of the Apex Court decision referred to therein. It is in reference to a decision of this Court in the case of ***Khirodini and Ors. -Vrs.- Dinamani Suna*** decided on 05.11.2015 in C.M.P.No.239 of 2015, reported in 2016(I) OLR 285, Mr.Mishra, learned counsel for the petitioner contended that in similar situation taking into account the income of both, this Court directed for payment of interim maintenance in favour of the wife. There has been reference of decision in the case of ***Sridhar Bandaru –Vrs.- Vijaya Krishnamurty***, AIR 2019 MP 127, in the case of ***Neeta Rakesh Jain –Vrs.- Rakesh Jeetmal Jain***, AIR 2010 SC 3540 asking for increase in the grant of interim maintenance.

7. On his contest, Mr.Pihan, learned counsel appearing for the husband taking this Court to the decision taken support by the trial court and for the admission of both parties regarding their earning

status while not even disputing the wife's claim on present income of husband more than Rs.2,54,540/- contended that there has been right appreciation on the interim maintenance aspect by the trial court and pleaded that for the settled position of law by this time, there should not be entitlement of the wife more than 25% of the husband's income. It is in the circumstance, learned counsel appearing for the opposite party-husband attempted to support the impugned order. On the present income aspect of the husband, Mr.Pihan, learned counsel contested the same on the premises that since such a stand was not available in the trial court, there is no question of taking into account the fresh stand and the decision in the impugned order involved confined to the material placed in the court below.

8. Considering the rival contentions of the parties, this Court finds undisputedly both the parties are earners being employed. Husband is an employee of Reserve Bank of India whereas the wife is an employee of a private establishment. Husband did not dispute with regard to his earning Rs.1,30,000/- per month as claimed by the wife. There is also no denial to the wife earning Rs.50,688/- per month. It is in this situation, keeping in view the claim of the wife that for there is separation and a desertion of a wife at the

instance of the husband, the wife is in requirement of an independent house for which she claims to be spending Rs.16,000/- per month as house rent. There is also claim at the instance of the wife that she also spent a sum of Rs.3,000/- towards electricity charges. Looking to place of working of the wife, there cannot be any doubt that she must be spending a huge amount for up & down to her office and back to her rented home. This Court for the above background here observes there is no denial towards spending of huge amount by the wife while in employment in a private establishment in Bombay. On the other hand, husband is an employee of Reserve Bank of India holding a Management post and undisputedly in the salary statement for the month of July, 2018, as provided by the Reserve Bank of India showing gross salary of the husband to be Rs.1,60,657/- per month and for the submission of the husband, the husband is a resident of Bhubaneswar being his service place, there is no doubt that there is huge difference in maintaining of livelihood in between Bhubaneswar and a city like Mumbai. It is keeping in view all the above, this Court at this stage going through the decision in the case of **Kalyan Dey Chowdhury -Vrs.- Rita Dey Chowdhury**, reported in *AIR 2017 (SC)2383* finds there cannot be any dispute

in the decision taken therein. Going through the decision, this Court finds this is a case where both husband & wife were in employment. The husband while getting net salary of Rs.87,500/- per month being posted at Malda Medical College, Malda, West Bengal the wife also earned Rs.30,000/- per month as a qualified beautician and Montessori teacher and the son has also attained eighteen years of age. Hon'ble apex Court considering that wife is employed but, however, taking into account the materials available therein and plea of the parties reduced the interim maintenance granted by High Court @ Rs.60,000/- in addition to grant of Rs.10,000/- by the original court to Rs.25,000/- per month in addition to what she was in receipt by the order of the criminal court. At the cost of repetition it is said the grant of interim maintenance was in addition to what the wife was earning. Lower court measurably failed to understand the Hon'ble apex Court judgment in AIR 2017 (SC) 2383 and proceeded wrongly.

9. It is here this Court taking into account the decision in the case of *Neeta Rakesh Jain –Vrs.- Rakesh Jeetmal Jain*, AIR 2010 SC 3540 where in paragraph-8 the Hon'ble Apex Court has come to observe even though provision at Section 24 of the Hindu Marriage Act gives ample power on a Court to take decision in the

matter of granting pendent lite and litigation expenses, but while doing so for the language in the section, it is to be kept in mind while fixing interim maintenance, while giving due regard to the income of both the parties, the discretion of the court must be guided by the guideline provided in the section, namely, means of the parties and also after taking into account incidental and other relevant factors like social status, the background from which both the parties come from and the economical dependence. Here this Court likes to observe expenditure requirement looking to the place of residence while taking a decision in the matter of interim maintenance. It is for the disclosure of expenses required to be meted by the wife-petitioner disclosed in paragraph-4 and the income of both the wife and husband discussed hereinabove, this Court is of the view that there is definite deprivation of maintaining of a standard life living at Bombay with that of the maintenance of life of the husband at Bhubaneswar. This Court finds there should be grant of interim maintenance not only to see equal standard of maintenance of life by both wife and husband but also to ensure wife maintains a minimum standard of life to that of the husband. This Court here also takes into account a decision of this Court in the case of *Khirodini & Ors. –Vrs.- Dinamani Saha*, reported in

2016 (I) OLR 285. Principle therein clearly comes to aid of the wife-petitioner. Similarly, this Court also takes into account a decision (2018) 12 SCC 199 where Hon'ble apex Court held the court has to determine whether the income of the wife is sufficient to enable her to maintain herself in accordance with the life style of her husband in the matrimonial home. The case reported in (2008) 2 SCC 316 also gets support to the case of the petitioner. Keeping this in view and the income of both the wife and husband, this Court while declaring the refusal of grant of maintenance by the trial court as bad, interfering in the impugned order only in that respect directs the husband to pay at least a sum of Rs.15,000/- (Rupees fifteen thousand) per month towards interim maintenance to the wife to be paid by 7th of every succeeding English calendar month. Direction so far it relates to litigation expenses stands confirmed. As a consequence the wife will also be entitled to arrear maintenance from the date of application at the above rate. The whole arrear be calculated by the husband and shall be released in favour of the wife in 4 (four) equal by monthly instalments to be cleared within 8 (eight) months hereafter. The impugned order interfered with to the extent indicated hereinabove. Claim of wife on the basis of gross salary presently earned by

the husband since not involved in the lower court proceeding, this Court while refusing to entertain such aspect leave it to the party to undertake an appropriate exercise.

10. In the event the main proceeding is still pending, this Court directs the court below to expedite the trial involving application under Section 13 of the Hindu Marriage Act and conclude the same preferably within one year.

11. In the result, the C.M.P. succeeds. No order as to cost.

*Orissa High Court, Cuttack.
Dated the 4th day of March, 2022/SKS*

.....
BISWANATH RATH, J.

