

IN THE HIGH COURT OF ORISSA AT CUTTACK
RPFAM NO. 11 OF 2013

Md. Nazir

....

Petitioner

Mr. Pravat Kumar Mohanty, Advocate

-versus-

Yasmin Bano

....

Opp. Party

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
08.07.2022

Order No.

5. 1. This matter is taken up through hybrid mode.
2. This RPFAM has been filed assailing the order dated 19th January, 2013 passed in C.M.C. No. 184/398 of 2012, whereby learned Judge, Family Court, Sambalpur directed the Petitioner to pay a sum of Rs.2,500/- to the Opposite Party and Rs.750/- to each of the minor children from the date of application, i.e. on 19th June, 2012.
3. Mr. Mohanty, learned counsel for the Petitioner submits that the Petitioner is an Auto driver and he has filed the income certificate vide Ext.C issued by the Tahasildar, Sambalpur on 15th December, 2012 showing his annual income to be Rs.36,000/- as a driver. He, therefore, submits that since the monthly income of the Petitioner at the relevant time was Rs.3,000/- per month, direction for payment of Rs.4,000/- per month to the Opposite Party is illegal and is not sustainable. He, therefore, prays for setting aside the impugned order and to reduce the maintenance amount.
4. Although the sole Opposite Party is being represented through her learned counsel, no one appears on her behalf at the time of hearing of the RPFAM.

5. Upon hearing learned counsel for the Petitioner and on perusal of the record, it appears that the Petitioner has filed Ext.C in support of his income in which the Tahasildar, Sambalpur has stated that his annual income is Rs.36,000/- as a driver. Although it is claimed by the Opposite Party that the Petitioner is a Mini Truck driver and earns about Rs.1500/- per day, but she could not file any cogent evidence in support of her case. The materials available on record do not disclose as to under circumstances the Tahasildar, Sambalpur issued a certificate showing the annual income of the Petitioner to be Rs.36,000/-. Admittedly, the Opposite Party is the wife of the Petitioner and they were blessed with two children. Further, there is no material on record to come to a conclusion that the Opposite Party has any source of income. Thus, the Petitioner is liable to maintain her.

6. This Court vide order dated 7th May, 2013 while issuing notice in the matter directed stay of the judgment dated 19th January, 2013 passed in Criminal Misc. Case No. 184/398 of 2012 subject to the Petitioner depositing a sum of Rs.20,000/- towards arrear maintenance before learned Judge, Family Court, Sambalpur by 18th June, 2013 and continuing to pay a sum of Rs.2500/- per month to the Opposite Party and her children from the month of July, 2013. The said order is continuing till date.

7. It further appears from the case record that due to non-compliance of the interim order dated 7th May, 2013 passed by this Court, D.W. was issued against the Petitioner in Execution Case No. 26 of 2013. However, vide order dated 25th July, 2019, this Court directed the Petitioner to hand over a cheque amounting to Rs.30,000/- drawn in favour of Opposite Party. Learned counsel submits that the Petitioner has complied with the same.

8. In view of the above, this Court is of the considered opinion that a sum of Rs.750/- per month to each of the minor children is not excessive and requires no interference. However, taking into consideration the fact that the Petitioner is an Auto driver, this Court feels that the Petitioner should pay a sum of Rs.1,000/- per month to the Opposite Party towards her maintenance.

9. Accordingly, it is directed that the Petitioner shall pay a sum of Rs.1,000/- (Rupees one thousand) per month to the Opposite Party towards maintenance and also pay Rs.750/- per month to each of the children from the date of application, i.e. on 19th June, 2012.

10. With the aforesaid modification of the impugned order, the RPFAM is disposed of.

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

(K.R. Mohapatra)
Judge

bks

