

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.12283 OF 2022

Santilata Behuria

..... Petitioner

Mr. Amit Prasad Bose, Advocate

-versus-

Basanta Kumar Behuria

.... Opp. Party

Mr. Subash Chandra Puspalka, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

27.07.2022

Order No.

4. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition seeks to assail the order dated 2nd May, 2022 (Annexure-1) passed by learned Judge, Family Court, Jajpur in C.P No.152 of 2020, whereby he allowed an application filed by the Petitioner under Section 18 of the Hindu Adoption and Maintenance Act, 1956 (for short, 'the Act') by directing the Opposite Party to pay Rs.4,000/- per month to the Petitioner towards maintenance from the date of application, i.e., 21st September, 2020.
3. Mr. Bose, learned counsel for the Petitioner made lengthy argument submitting that the Opposite Party/Respondent has misled the learned Judge, Family Court, Jajpur by giving false information in the affidavit of disclosure under Column 5, wherein he has disclosed his monthly income to be Rs.12,705/- from pension, but record shows that the Opposite Party is drawing pension of Rs.21,120/- per month at the relevant period as per Ext.1. The Ext.4, which was issued by the Public Information Officer, District Treasury, Jajpur, discloses that the

gross pension of the Opposite Party was Rs.22,120/- per month, but after deduction of the commuted value of pension of Rs.6,600/- he is getting net pension of Rs.14,520/- per month. It is submitted that Commuted Value of Pension (CVP) is a voluntary deduction which should be taken into consideration towards income of the Opposite Party for determination of the maintenance. He further submitted by commutation of the pension the Opposite Party has received Rs.17,94,831/-, but not a single pie from the commuted pension has been spent for his wife, the Petitioner. Although it is stated that the Opposite Party has taken a friendly loan for construction of a house and the loan dues were repaid for from the commuted pension, but the house is being utilized by the Opposite Party. Petitioner at present is residing in parental house of the Opposite Party-husband. It is further submitted that although the Opposite Party has received other retiral dues the Petitioner has not been benefited out of that. Learned Judge, Family Court by accepting the pension to be Rs.14,520/- per month directed him to pay a sum of Rs.4,000/- per month to the Petitioner. In that view of the matter, the amount of maintenance requires enhancement.

4. Mr. Puspalka, learned counsel for the Opposite Party objecting to the above submission contended that so far as documents under Exts.1 and 4 are concerned, the statement made by learned counsel for the Petitioner is correct. The figure given in the affidavit of disclosure was according to the information available to the Opposite Party at the relevant time. Hence, it cannot be said that the Opposite Party has misled the Court by filing false affidavit. He, however, submits that the

Petitioner is residing in the house constructed by the Opposite Party by obtaining a friendly loan. It is his contention that the Opposite Party has spent for the marriage of the elder son and two daughters. Thus, the Opposite Party has discharged his social obligation from the retiral dues. As such, the impugned order warrants no interference.

5. Taking into consideration the submissions made by learned counsel for the parties, this Court at the outset observes that correctness of the information given in the disclosure affidavit is a matter of consideration by initiating appropriate proceeding. So far as the amount of pension is concerned, true it is that, monthly pension of the Opposite Party is Rs.21,120/-, but after deduction of Rs.6,600/- towards CVP, it becomes Rs.14,520/-. The CVP is a deduction for availing commuted pension. An employee after his retirement can avail the commuted pension, so that he can get a lump sum at a time to meet the social obligations at such age. Thus, the amount deducted for availing commuted pension cannot be said to be involuntary in nature. It can be safely said to be a voluntary deduction, which should have been taken into consideration as the income of the Opposite Party while determining the amount of maintenance. Thus, CVP ought to have been added in the net pension amount of the Opposite Party for determination of the amount of maintenance. Thus, pension amount of Rs.21,120/- per month should have been considered for determining the maintenance amount and not Rs.14,520/-. In that view of the matter, the Petitioner is entitled to enhancement of the maintenance amount directed to be paid to her. It is of course not

disputed that the Opposite Party is residing in a rented house and he has his other obligations to meet, but that does not absolve him from maintaining his wife.

6. In view of the discussions made above, this Court feels that an amount of Rs.5,000/- would be just and proper to be the amount of maintenance in the facts and circumstances of the case. Accordingly, this Court directs that the Opposite Party shall pay a sum of Rs.5,000/- (rupees five thousand only) towards maintenance to the Petitioner from the date of filing of application under Section 18 of the Act, i.e., 21st September, 2020.

7. The writ petition is disposed of with the aforesaid modification in the impugned order.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

s.s.satapathy