

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 96 OF 2022

Jayanta Swain

....

Petitioner

Mr. Arijeet Mishra, Advocate

-versus-

Sujata Swain and another

....

Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

09.12.2022

Order No.

2.
 1. This matter is taken up through hybrid mode.
 2. The Petitioner in this RPFAM seeks to assail the order dated 24th February, 2022 (Annexure-2) passed in Criminal Proceeding No.165 of 2017, whereby learned Judge, Family Court, Jajpur directed him to pay maintenance @ Rs.2,500/- per month to Opposite Party No.1 and Rs.1,500/- per month to Opposite Party No.2 (minor son) with effect from the date of application i.e. on 15th September, 2017.
 3. Mr. Mishra, learned counsel for the Petitioner submits that relationship between the parties is not disputed. However, no concrete evidence about the income of the present Petitioner is available on record. Whereas the Petitioner deposed that he is a daily labourer, the Opposite Party No.1 in her evidence has stated that the Petitioner is a marble supply contractor and is earning Rs.50,000/- per month. But, she has not filed any document to that effect. Learned trial Court without making any endeavour to find out what is actual income of the present Petitioner, has directed to pay the maintenance as above. Hence,

the impugned order under Annexure-2 is not sustainable and is liable to be set aside.

4. Taking into consideration the submission made by learned counsel for the Petitioner and on perusal of the record, it appears that although the Petitioner has examined two witnesses and produced certain documents, but no evidence with regard to his income has been adduced. A mere statement to the effect that he is a daily labourer will not suffice to rebut the statement made by P.W.1 (Wife) to the effect that the Petitioner is earning a sum of Rs.50,000/- per month as a special class marble supply contractor. It further appears that taking into consideration the status of the parties, cost of living together with the need of the Opposite Parties to maintain themselves, learned Judge, Family Court has directed to pay the maintenance as above which does not appear to be unreasonable or excessive.

5. In view of the above, I am not inclined to interfere with the impugned order under Annexure-2.

6. Accordingly, this RPFAM being devoid of any merit stands dismissed.

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

(K.R. Mohapatra)
Judge

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