

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM NO. 42 OF 2021

Nitesh Kumar Mahawar **Petitioner**

Mr. Lalatendu Samantaray, Advocate

-versus-

Binita Gupta **Opp. Party**

Mr. Kedar Chandra Sarangi, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

15.07.2022

Order No.

5. 1. This matter is taken up through hybrid mode.
2. This RPFAM has been filed assailing the order dated 25th March, 2021 passed in Cr.P. No. 260 of 2018, whereby learned Judge, Family Court, Bhadrak directed the Petitioner to pay maintenance of Rs.15,000/- per month to the Opposite Party from the date of filing of the application, i.e. 30th October, 2018.
3. Mr. Samantray, learned counsel submits that the Petitioner is working as a Delivery Manager in Moody's Analytics Knowledge Services (India) Pvt. Ltd at Bangalore and his take home salary is Rs.70,000/- per month. It is his submission that the Opposite Party is serving as a Project Manager in Sheltra Consultants Pvt. Ltd. at Bangalore and is an income tax assessee. Although the contention of the Petitioner was reflected in the impugned order, but the said fact was not taken into consideration while determining the quantum of maintenance. He further submits that while determining the quantum of maintenance under Section 125 Cr.P.C., learned Judge, Family Court, Bhadrak ought to have taken into

consideration the respective income of the parties and their obligation and requirement. Although take home salary of the Petitioner is Rs.75,000/- per month, he has other obligations. Hence, the quantum of maintenance as directed to be paid by the Petitioner to the Opposite Party is excessive in the facts and circumstances of the case and needs reconsideration.

4. Mr. Sarangi, learned counsel for the Opposite Party, on the other hand, submits that he has no instruction with regard to the income of Opposite Party. However, no document whatsoever was filed by the present Petitioner before learned Judge, Family Court showing the income of Opposite Party. He, therefore, submits that the quantum of maintenance as directed to be paid by the Petitioner to the Opposite Party is just and proper, which is determined on the basis of materials available on record.

5. Taking into consideration the submission of learned counsel for the Petitioner, this Court vide order dated 31st March, 2022 while issuing notice in the matter directed that on payment of Rs.10,000/- per month towards maintenance to the Opposite Party, no coercive action shall be taken against the Petitioner pursuant to the impugned order.

6. Mr. Samantray, learned counsel for the Petitioner submits that the Petitioner is complying with the said interim order. Over and above payment of monthly maintenance as directed by this Court in the interim order, he is also clearing up the arrear dues by paying lump sum amounts at different dates.

7. Taking into consideration the submissions of learned counsel for the parties and on perusal of the impugned order, it appears that although learned Judge, Family Court, Bhadrak while adjudicating the matter has taken note of the contention of the Petitioner that she (the Opposite Party) is serving as a Project Manager in a private Company at Bangalore, but has not discussed about her income, while determining the quantum of maintenance. It also appears from the case record that the Opposite Party has not adduced any evidence with regard to her income. Thus, the matter requires fresh consideration.

8. Accordingly, this Court while setting aside the impugned order remits the matter back to the learned Judge, Family Court, Bhadrak for fresh adjudication of Cr.P. No. 260 of 2018 in accordance with law, giving opportunity of hearing to the parties concerned.

9. It is made clear that the Petitioner shall go on paying a sum of Rs.10,000/- (Rupees ten thousand) per month to the Opposite Party till disposal of Cr.P. No.260 of 2018 pending before learned Judge, Family Court, Bhadrak. The Opposite Party may move the learned Judge, Family Court, Bhadrak for recovery of arrear maintenance.

10. With the aforesaid observation and direction, the RPFAM is disposed of.

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

(K.R. Mohapatra)
Judge