

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 206 OF 2016

Barisa Hembram

....

Petitioner

Mr. Manoj Kumar Panda, Advocate

-versus-

Binati Hembram

....

Opp. Party

Mr. B.K. Behera, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

16.12.2022

Order No.

- 6.
1. This matter is taken up through hybrid mode.
 2. The Petitioner in this RPFAM seeks to assail the order dated 21st July, 2016 (Annexure-4) passed by learned Judge, Family Court, Rourkela in Criminal Proceeding No.123 of 2013, whereby allowing an application under Section 125 Cr.P.C. *ex parte*, the Petitioner has been directed to pay Rs.5,000/- per month to the Opposite Party as maintenance from the date of filing of the petition i.e. from 28th October, 2013 till 20th July, 2016 and thereafter to pay Rs.15,000/- per month from the date of the order i.e. from 21st July, 2016.
 3. Since the order has been passed *ex parte*, Mr. Panda, learned counsel for the Petitioner, in course of hearing, submits that the grounds taken herein can be better adjudicated by learned Judge, Family Court, Rourkela by scrutinizing the materials, both oral and documentary on record. He also submits that proviso to Section 126(2) Cr.P.C. provides that learned Judge, Family Court has the power to set aside an *ex parte* order under Section 125 (1)

Cr.P.C. on showing sufficient cause. In that view of the matter, he prays for withdrawal of the RPFAM to move learned Judge, Family Court, Rourkela by filing an application under proviso to Section 126(2) Cr.P.C.. He, however, submits that a direction may be made to consider the delay in filing the petition liberally.

4. Taking into consideration the submission made by learned counsel for the Petitioner, the RPFAM is disposed of as withdrawn with an observation that in the event, an application under proviso to Section 126(2) Cr.P.C. is filed within a period of one month from today, learned Judge, Family Court, Rourkela while adjudicating the petition for condonation of delay shall take into consideration the pendency of the RPFAM from 19th October, 2016 till date along with other grounds.

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

(K.R. Mohapatra)
Judge

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