

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 13137 OF 2022

Subodha Kumar Pradhan ***Petitioner***

Mr. Amit Prasad Bose, Advocate

-versus-

Elizabeth Sahoo and another ***Opp. Parties***

Mr. Ramesh Chandra Behera,
Advocate

**CORAM:
JUSTICE K.R. MOHAPATRA**

ORDER

13.10.2022

Order No.

6. 1. This matter is taken up through hybrid mode.
2. Order dated 7th April, 2022 (Annexure-1) passed in I.A. No.24 of 2019 (arising out of C.P. No.100 of 2019) is under challenge in this writ petition, whereby learned Judge, Family Court, Angul allowing an application under Section 24 of the Hindu Marriage Act, 1956 (For short 'the Act') directed the Petitioner to pay a sum of Rs. 12,000/- per month to the Opposite Parties for their maintenance with effect from the date of application till disposal of the civil proceeding along with litigation expenses of Rs.10,000/-.
3. Mr. Bose, learned counsel submits that the Petitioner is the husband of Opposite Party No.1 and Opposite Party No.2 is born out of their wedlock. Due to marital discord, a petition under Section 13 of the Act has been filed by the Petitioner for dissolution of marriage by a decree of divorce in C.P. No.100 of 2019. The Opposite Party No.2 has not been made a party to the said civil proceeding. However, on her appearance, the Opposite Party No.1 filed an application under Section 24 of the Act for

pendente lite maintenance in her favour as well as in favour of her minor son. Said application was allowed vide order under Annexure-1.

4. It is his submission that Section 24 of the Act makes a provision for *pendente lite* maintenance to the spouse, who has no sufficient means to maintain himself/herself. No provision is made under Section 24 of the Act to grant *pendente lite* maintenance to any minor child of the spouse. Hence, awarding maintenance in favour of Opposite Party No.2 is not sustainable. He further submits that the Opposite Party No.1 has admitted in her evidence that she is working as a contractual P.E.T. in a Government High School and is receiving Rs.13,310/- per month towards her salary. Although the Family Court has taken note of the same while discussing the evidence of both the parties, but while determining the quantum of maintenance has failed to consider the same. Learned Family Court holding that the Petitioner has sufficient means to maintain the Opposite Parties directed the Petitioner to pay maintenance, as stated above. The take home salary of the Petitioner is Rs.31,417/- per month. Since the Opposite Party No.1 has source of income and there is no finding to the effect that the same is not sufficient to maintain herself, the impugned order directing the Petitioner to pay maintenance @ Rs.12,000/- per month is not sustainable. He further submits that in the meantime, the Opposite Party No.1 has become a regular Government employee and is earning more than Rs.40,000/- per month, but the Petitioner is not in a position to produce any material to that effect as the application made by the Petitioner under the provisions of R.T.I. Act was

rejected. He, therefore, prays for setting aside the impugned order and to remit the matter back to the learned Judge, Family Court, Angul for fresh adjudication.

5. Mr. Behera, learned counsel for the Opposite Parties vehemently objected to the same and contended that maintainability of the petition as against Opposite Party No.2 was never raised before learned Judge, Family Court, Angul. He further submits that the Hon'ble Supreme Court has time and again approved the grant of maintenance to the minor children under Section 24 of the Act. Had the Petitioner raised such a plea before learned Judge, Family Court, Angul, the Opposite Parties would have got an opportunity to rebut the same. As such, the plea raised by the Petitioner at this stage is not sustainable. He further submits that the Opposite Party No.1 in her evidence has categorically stated that at the time of filing of the petition under Section 24 of the Act, the Opposite Party No.1 was getting a monthly remuneration of Rs.5,200/-, which was subsequently enhanced. On the date of deposition, she was drawing a salary of Rs.13,310/- per month. He, however, strongly refutes the contention of Mr. Bose, learned counsel for the Petitioner that the services of Opposite Party No.1 have been regularized in the meantime. Referring to the discussion made by learned Judge, Family Court, Angul, Mr. Behera, learned counsel for the Opposite Parties submits that the contention raised by learned counsel for the parties has been taken into consideration after a detailed discussion. As such, the impugned order warrants no interference.

6. Upon hearing learned counsel for the parties and on perusal of the materials on record including the provision of law, it appears that Section 24 of the Act makes provision for grant of *pendente lite* maintenance to any of the spouse who has no sufficient means to maintain himself/herself. Section 24 of the Act does not make any provision with regard to maintenance to the children of the spouse. Mr. Behera, learned counsel for the Opposite Parties, however, relied upon the decision in the case of ***Rita Dutta and others –v- Subhendu Dutta***, reported in (2005) 6 SCC 619, wherein the Hon'ble Apex Court while reversing the order of High Court has upheld the order of Family Court directing to pay maintenance to the wife and major sons under Section 24 of the Act. The case law cited by Mr. Behera, learned counsel for the Opposite Parties is not applicable to the instant case as no specific objection with regard to grant of maintenance to children was raised or adjudicated in the said case law. Further, it appears that no such plea was raised before learned Judge, Family Court, Angul by filing objection or at the time of argument. Such a plea is raised for the first time before this Court. This being an issue of law can be taken into consideration by this Court. The answer to this issue, however, depends upon appreciation of materials available on record. It further appears that learned Judge, Family Court, Angul has discussed the evidence adduced by both the parties in detail and the materials on record, but at the time of determining the quantum of maintenance, although income of husband-Petitioner was taken note of but has not discussed about the income of the wife-Opposite Party No.1. It is, however, apparent from the

evidence of Opposite Party No.1 that the income of Rs. 13,310/- per month is not sufficient for their maintenance (herself and her minor son).

7. Law is well settled that while determining the quantum of maintenance, the Court has to take into consideration the respective income of the parties and their dependency and social obligation. Those aspects have not been taken into consideration by learned Judge, Family Court, Angul while determining the quantum of *pendente lite* maintenance.

8. In view of the above, the matter requires fresh consideration. Accordingly, the impugned order under Annexure-1 is set aside and the matter is remitted back to the learned Judge, Family Court, Angul for fresh adjudication in accordance with law giving opportunity of hearing to the parties concerned to put-forth their case. Since the Petition is filed under Section 24 of the Act, learned Judge, Family Court, Angul shall make an endeavour for early disposal of the petition under Section 24 of the Act expeditiously without allowing unnecessary adjournments. Parties are directed to appear before learned Judge, Family Court, Angul on 26th October, 2022 along with certified copy of this order to receive further instruction in the matter.

9. With the aforesaid observation and direction, this writ petition is disposed of.

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

(K.R. Mohapatra)
Judge