

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 462 OF 2022

Kumar Panda ***Petitioner***

Mr. Dharmendra Sethy, Advocate
-versus-

Suchismita Acharya ***Opp. Party***

Mr. S.K. Zafarulla, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
08.09.2022

Order No.

4. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 5th May, 2022 (Annexure-3) passed in I.A. No.105 of 2021 (arising out of C.S. (MAT) No.09 of 2020), whereby learned Senior Civil Judge, Nilgiri while allowing an application under Section 24 of the Hindu Marriage Act, 1995 (for short 'the Act') directed the Petitioner to pay a sum of Rs.5,000/- per month to the Opposite Party along with litigation expenses of Rs.10,000/- from the date of filing of the interim application.
3. This Court while issuing notice vide order dated 5th July, 2022, as an interim measure, directed that no coercive action pursuant to the order dated 5th May, 2022 passed by learned Civil Judge (Senior Division), Nilagiri in I.A. No.105 of 2021 (arising out of C.S.(MAT) No.09 of 2020) shall be taken subject to the condition that the Petitioner goes on paying a sum of Rs.4,000/- per month to the Opposite Party till the next date. The matter was subsequently listed on 8th August, 2022 on which date Mr. Zafarulla, learned counsel for the Opposite Party

intimated the Court that the interim order has not been complied with. Accordingly, on the said date, the interim order was vacated.

4. Mr. Sethy, learned counsel for the Petitioner submits that the marital status of parties to the CMP is not disputed. They are also blessed with a child, who is staying with the Opposite Party. The Petitioner is working as a helper in a Saloon (Gents' Parlor) and has no sufficient means to pay Rs.5,000/- per month to the Opposite Party. It is further submitted that the Opposite Party is working as a Teacher in Raja Kishore Chandra Residential School at Nilgiri and her monthly salary is Rs.15,000/-. Learned trial Court considering the fact that the Opposite Party does not have any sufficient means to sustain herself and child has directed the Petitioner to pay maintenance of Rs.5,000/- per month to the Opposite Party. But, Section 24 of the Act does not provide for grant of maintenance to the minor child. Hence, the amount of maintenance requires re-consideration.

5. Mr. Zafarulla, learned counsel for the Opposite Party vehemently objects to the same and submits that the Petitioner is working as a skilled hair designer and is earning Rs.50,000/- per month by engaging himself in a big parlor and he has also landed properties. The Opposite Party has no independent source of income. The plea that the Opposite Party is serving as a teacher is disbelieved by learned trial Court as no evidence to that effect was led by the Petitioner. In absence of any evidence with regard to income of the Petitioner, learned trial Court

directed him to pay the aforesaid maintenance. Hence, the same requires no consideration.

6. Upon hearing learned counsel for the parties and on perusal of the record, it appears that none of the parties has led any evidence with regard to their respective income. Learned trial Court on the basis of materials on record came to hold that the Petitioner being an able bodied person is capable of earning to maintain his wife. There is no evidence on record to show that the Opposite Party-Wife has an independent source of income. Although the Petitioner claims that he was working as a helper in a gents' parlor, but no evidence to that effect was led. The Petitioner has special knowledge about his income and onus is on him to prove the same. In absence of any material to that effect, learned trial Court has made a guess and assessed the maintenance. On scrutiny of the materials on record in the light of the submissions of learned counsel for the parties, this Court finds that no case is made out to interfere with the impugned order under Annxure-3.

7. Accordingly, the CMP being devoid of any merit stands dismissed.

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

(K.R. Mohapatra)
Judge