

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No.105 of 2022

Jyotiranjana Bai @ Sukant

..... Petitioner

Mr. G.P.Mohanty, Advocate

-versus-

Diptimayee Nayak @ Dali

.... Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

14.09.2022

Order No.

1. This matter is taken up through Hybrid mode.
2. Petitioner in this RPFAM seeks to assail the order dated 22nd April, 2022 (Annexure-1) passed by learned Judge, Family Court, Dhenkanal in Cr.P. No.155 of 2019, whereby the Petitioner has been directed to pay maintenance at the rate of Rs.8,000/- per month to the Opposite Party from the date of filing of the application.
3. Learned counsel submits that the Opposite Party is the legally married wife of the Petitioner. She has sufficient means to maintain herself. Petitioner being a private tutor in the village does not have sufficient means to pay inflated amount of maintenance directed by learned Family Court. He further submits that Petitioner has categorically stated that his income would be Rs.3,000/- per month. The said evidence was not taken into consideration by learned Family Court while adjudicating the matter. In view of the above, he submits that the amount of maintenance directed to be paid to the Opposite Party requires reconsideration.

4. Upon hearing learned counsel for the Petitioner and on perusal of record it appears that learned Judge, Family Court while adjudicating the matter, has taken into consideration the plea of the Petitioner to the effect that he is getting monthly fees of Rs.3,000/- from the private tuition. There is no material on record to show that Petitioner has adduced any documentary or oral evidence with regard to his income. There is also no material to show that the Petitioner has filed any affidavit of disclosure in terms of the judgment of the Hon'ble Supreme Court in the case of ***Rajnish Vs. Neha and another***, reported in (2021) 2 SCC 324. The income of the Petitioner is within his special knowledge and he has to lead evidence to that effect. In absence of the same, learned Judge, Family Court had to make a guess work. While assessing income of the Petitioner, learned Judge Family Court has taken into consideration the materials on record, came to a conclusion that income of the Petitioner must be around Rs.30,000/- per month and has directed him to pay maintenance of Rs.8,000/- per month to the Opposite Party.

4.1. This Court while exercising power of revision should not sit over the findings of learned Judge, Family Court, Dhenkanal, which is arrived at on scrutiny of materials on record.

5. In view of the above, I am not inclined to entertain the revision. Accordingly, the RPFAM is dismissed being devoid of any merit.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge