

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1459 of 2022

Prafulla Kumar Singh

....

Petitioner

-versus-

Subhashri Singh and others

....

Opposite Parties

CORAM: JUSTICE S.PUJAHARI

ORDER

26.07.2022

Order No.

02.

1. This matter is taken up through Hybrid mode.

2. As it appears, vide order dated 22.04.2022, learned Judge, Family Court, Cuttack in CRP No.584 of 2011, while closing the evidence from the side of the Petitioner has observed as under:

“A sum of Rs.35,000/- arrear maintenance was due against the Opposite Party by 26.11.2019. Hence he may be debarred to adduce defence evidence. Heard both the sides. On perusal of record, it is found that on several times, Opposite Party is directed to pay the interim maintenance dues but he did not pay the maintenance amount. Evidence from the side of Petitioner has already been closed. So for early disposal of the proceeding, the Opposite Party is debarred from adducing evidence on its behalf, however, he can take part in argument. Put up on 17.05.2022 for argument.”

3. Learned counsel for the Petitioner has assailed the aforesaid order to be illegal and arbitrary, as such, made a prayer to set aside the same. It is needless to say that if an

interim maintenance is ordered in a proceeding under Section 125 Cr.P.C. is not paid, the Court can take coercive action to execute the said order in an appropriate proceeding, but for non-payment of the same, a person saddled with the liability cannot be deprived of his legitimate right to contest the case by adducing evidence in his defence. However, learned Judge, Family Court, Cuttack in oblivious to the same and has passed the impugned order as quoted supra. The order seems to be palpable illegal one and has no sanction of law, therefore, this Court sets aside the same at the time of admission without notice to the opposite parties. While setting aside the said order remitting the matter to the court below to proceed in the case by giving a reasonable opportunity to the opposite party therein to adduce his defence evidence. However, if the Petitioner in spite of opportunity given did not adduce his evidence then there is no impediment on the part of the court below to close his evidence and then conclude the proceeding in the manner known to law.

4. With the aforesaid direction, the CRLMC stands disposed of.

5. Issue urgent certified copy as per rules.

(S. Pujahari)
Judge

Uks