

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.940 of 2011

Rabi Dalai

.... **Petitioner**

Mr. S. Pattnaik, Advocate

-Versus-

Kuntala Behera and another

.... **Opposite Parties**

Mr. S.R. Mohapatra, Advocate

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

11.03.2022

Order No.

- 08.
1. Heard learned counsel for the petitioner and learned counsel for the opposite parties.
 2. An application Section 482 Cr.P.C. is filed by the petitioner assailing impugned judgment dated 22nd February, 2011 C.P. No. 31 of 2011 passed by the learned Judge, Family Court, Bhubaneswar, who confirmed order dated 28th March, 2009 passed in CMC No. 585/2008 by the learned JMFC, Bhubaneswar on the ground that it is not tenable in law morefully for the reason that he was not provided an opportunity of hearing and the proceeding was disposed of ex parte.
 3. Mr. S. Pattanaik, learned counsel for the petitioner submits that C.M.C. No. 585 of 2008 was posted to 7th April, 2009 for objection and hearing but then, it was pre-poned by the learned JMFC, Bhubaneswar, who received evidence only from the opposite parties and thereafter, closed the argument and by the impugned order dated 28th March, 2009 i.e. Annuxure-2 directed payment of

sum of Rs. 1000/ and Rs. 500/- as monthly maintenance in favour of opposite party Nos. 1 & 2 respectively which was challenged before the Family Court, Bhubaneswar in C.P. No. 31 of 2011 by raising the plea that the disposal of the proceeding by the court below was ex-parte without providing any opportunity of hearing to him. It is, thus, contended that in view of the above and the fact that the case was pre-poned and disposed of before the date fixed dated 7th April, 2009, which was not even appreciated by the Family Court, Bhubaneswar and therefore, the impugned orders i.e. Annexure-2&3 should be set aside and the matter ought to be sent back for a fresh decision with due participation of the petitioner.

4. Mr. A. Mohanty, learned counsel for the opposite parties, on the other hand, submits that there was ample opportunity for the petitioner to file a show cause and participate but he failed and thereafter, the learned JMFC, Bhubaneswar passed the order of the maintenance which was later confirmed by the learned Judge, Family Court, Bhubaneswar considering the evidence on record and the decision to be on merits and therefore, it should not be interfered with.

5. The Court perused the orders of the learned J.M.F.C., Bhubaneswar in Annexure-1. It is made to reveal from Annexure-1 that the case was posed to 7th April, 2009 for hearing with evidence and objection to be filed by the petitioner. The above order was passed on 18th March, 2009 and the case had to be adjourned since the Bar was on strike/cease work. However, it is further revealed that the case was abruptly taken up for hearing on 25th March, 2009, in essence, it was pre-poned and evidence of the said opposite party was received and the evidence was closed and thereafter, the final order i.e. Annexure-2 was passed on 28th March, 2009. No reason or any explanation is

forthcoming from order dated 25th March, 2009 as to what prevailed upon or compelled the learned JMFC, Bhubaneswar to pre-pone the case for hearing and that too pass an order on 28th March, 2009 which obviously prevented the petitioner from filing the show cause and participating in the proceeding. In other words, the learned J.M.F.C., Bhubaneswar in the absence of the petitioner received the evidence on 25th March, 2009 directing payment of monthly maintenance of Rs. 1000/- and Rs.500/- to opposite party Nos. 1 & 2 respectively. Of course, the petitioner, thereafter, approached the Family Court, Bhubaneswar and challenged the order of the learned JMFC, Bhubaneswar in C.P. No. 13 of 2011 but without any result.

6. On the last occasion, learned counsel for the petitioner was directed to file a copy of the revision petition to show as to if such a ground had in fact been raised in revision before the Family Court, Bhubaneswar. In response, a copy of the revision petition filed in C.P. No. 31 of 2011 is made available to the Court which is not yet served upon the learned counsel for the opposite parties but then on perusal of the said copy of the revision petition, it appears that the petitioner claimed to be ill and his conducting counsel was absent for which ex parte order was passed. In any case, this Court does not find any explanation from the impugned order i.e. Annexure-2, as to for what reason, the case was pre-poned to 25th March, 2009 and then was disposed of, when it was posted to 7th April, 2009.

7. On being asked, the learned counsel for the respective parties could not inform the Court as to if by virtue of the impugned order dated 28th March, 2009, any amount of the monthly maintenance was paid by the petitioner to the opposite parties.

8. Regard being had to the above facts and taking into account the fact that the petitioner did not have any opportunity to file the show cause before the court of learned JMFC, Bhubaneswar as the case was pre-poned which is clearly revealed from the Annexure-1, the Court is of the considered view that in order to provide him an opportunity of hearing and due participation, the impugned order under Annexure-3 which confirmed Annexure-2 should be set aside with following directions.

9. In the result, impugned order i.e. Annexure-3 passed in C.P. No. 13 of 2011 confirming order of maintenance passed in CMC No. 585 of 2008 is hereby set aside with a direction to the learned SDJM, Bhubaneswar to receive evidence from the side of the petitioner after a show cause is filed and with the participation of both the sides to dispose of the case as expeditiously as possible and in any case, not later than 30th April, 2022.

10. Accordingly, the CRLMC stands disposed of.

11. An urgent certified copy of this order be issued as per rules.

(R.K. Pattanaik)
Judge