

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No. 14541 of 2022

Sanatan Barik

..... Petitioner

Mr. J.K.Mishra-2, Advocate

-versus-

Rajashree Barik and another

.... Opp. Parties

Mr. Kabiranjana Mohanty, Advocate

(For Opposite Party No.1)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

05.07.2022

Order No.

2. 1. This matter is taken up through Hybrid mode.
2. Petitioner is aggrieved by the part of the order dated 19th May, 2022 (Annexure-6) passed in CP No.391 of 2015 (I), whereby learned Judge, Family Court, Balasore afforded last chance to clear up the outstanding arrear maintenance amount to the tune of Rs.7,18,750/- by 29th June, 2022, failing which, his pleadings was directed to be struck off.
3. Mr. Mishra, learned counsel for the Petitioner submits that for realization of the arrear *pendente lite* maintenance under Section 24 of the Hindu Marriage Act, 1955, Opposite Party No.1 filed Execution Case No.6 of 2017 for realization of arrear maintenance for the period from 27th February, 2016 to 27th March, 2017 amounting to Rs.1,45,000/-, out of which the Petitioner has already paid Rs.36,250/-. Execution Case No.17 of 2018 for the period from 27th March, 2017 to 11th November, 2018 amounting to Rs.1,95,000/-; Execution Case No.22 of 2019 for the period from 11th November, 2018 to 10th November, 2019 amounting to Rs.1,20,000/-; Execution Case No.16 of 2021 for the period from 11th November, 2019 to 10th November, 2021

amounting to Rs.2,40,000/- are also filed. The Opposite Party No.1 filed an application on 6th May, 2022 (Annexure-7) praying *inter alia* to direct the employer of the Petitioner to deduct 50% of his salary and remit the same to her SB A/c maintained in the SBI Main Branch, Balasore. Learned Judge, Family Court, Balasore, while considering the said petition, categorically held that admittedly Opposite Party No.1 has filed different Execution Cases to realize the aforesaid outstanding dues. Therefore, there is no scope to issue a direction in the Civil Proceeding for realization of the above dues by attaching salary of the Petitioner to the extent of 50%. However, at the same breathe, relying upon the ratio in the case of ***Rajnesh Vs. Neha and Another, reported in 2021 (I) OLR SC 348***, learned Judge, Family Court, Balasore directed as under:-

"In view of the above settled position of law, the petitioner is hereby afforded a last chance to clear the outstanding arrear maintenance amount of Rs.7,18,750/- by 29.06.2022 failing which his pleadings shall be struck off."

संक्षेपिक न्यायो

4. Mr. Mishra, learned counsel for the Petitioner submits that by order dated 29th March, 2018 passed in CP (Execution) Case No.6 of 2017, learned Judge, Family Court, Balasore has directed for realization of arrear interim maintenance amounting to Rs.1,45,000/- by way of deduction of Rs.20,000/- in seven monthly equal and consecutive instalments and Rs.7,000/- for the last, i.e., 8th installment from the salary of the Petitioner. Other Execution Cases as referred to hereinabove are pending for consideration. At this juncture, aforesaid impugned direction of learned Judge, Family Court, Balasore is contrary to law, inasmuch as it will amount to review of the order passed in CP (Execution) Case No.6 of 2017 in absence of any prayer to that

effect. He further submits that in view of such a direction, order dated 29th March, 2018 passed in CP (Execution) Case No.6 of 2017 becomes redundant. Learned Judge, Family Court, Balasore, while passing the impugned order, did not at all take into consideration the aforesaid material aspect. Hence, the impugned order to strike off the pleadings of the Petitioner for non-payment of arrear maintenance dues is not sustainable and is liable to be set aside.

5. Mr. Mohanty, learned counsel for Opposite Party No.1 submits that the Petitioner is not cooperating with learned Judge, Family Court, Balasore in the pending Execution Cases. He is also not paying arrear as well as current maintenance directed to be paid in CP No.391 of 2015 (I) regularly. Thus, the learned Judge, Family Court, Balasore has committed no error in passing the impugned order.

6. Taking into consideration the submissions made by learned counsel for the parties and on perusal of the materials on record, this Court finds that in one hand learned Judge, Family Court, Balasore observed that prayer for realization of the arrear maintenance dues, as aforesaid, attaching 50% salary of the Petitioner is not permissible in CP No.391 of 2015 (I). On the other hand, relying upon the ratio in the case of **Rajnesh (supra)**, learned Judge, Family Court, Balasore has passed the impugned order, as aforesaid. It is not disputed that earlier learned Judge, Family Court, Balasore has issued direction in CP (Execution) Case No.6 of 2017 to realize the arrear maintenance amount of Rs.1,45,000/- by deducting Rs.20,000/- in seven monthly equal and consecutive instalments and Rs.7,000/- for the last, i.e., 8th installment from the salary of the Petitioner. The said arrear amount of Rs.1,45,000/- includes in the total outstanding amount

of Rs.7,18,750/- directed to be paid by the Petitioner by 29th June, 2022. It means by virtue of the impugned order, the direction vide order dated 19th May, 2022 (Annexure-6) passed in CP No.391 of 2015 (I), the order dated 29th March, 2018 passed in CP (Execution) Case No.6 of 2017 becomes redundant.

7. It further appears that no prayer for striking off pleadings of the Petitioner has been made by the Opposite party No.1 in CP No.391 of 2015 (I). Further, no opportunity was given to the Petitioner to have his say in the matter before the impugned order under Annexure-6 is passed.

8. In that view of the matter, the impugned order to the extent that unless the Petitioner clears up the outstanding arrear maintenance of Rs.7, 18,750/- by 29th June, 2022, his pleadings shall be struck off, is not sustainable in the eye of law. Hence, the impugned order to that extent is not sustainable and is accordingly set aside.

9. The writ petition is disposed of accordingly.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge