

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 120 of 2022

Haresh Kumar Pradhan

.....

Petitioner

Mr. Mahes Das, Advocate

-versus-

Sabita Pradhan

....

Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

21.09.2022

Order No.

2. 1. This is an application for amendment of the CMP.
2. Petitioner in this RPFAM seeks to assail the order dated 30th April, 2022 (Annexure-1) passed in Cr.P No.73 of 2020, whereby learned Judge, Family Court, Phulbani directed the Petitioner to pay monthly maintenance of Rs.7,000/- to the Opposite party from the date of application, i.e., 23rd December, 2020.
3. Learned counsel submits that the Petitioner has constructed a house by incurring loan from the Bank. The said house is being occupied by the Opposite Party and their children. Petitioner is also paying EMI in respect of the said housing loan. Referring to the deposition of PW-1 (Opposite Party), learned counsel for the Petitioner submits that their son is working as a teacher in Usurumaha School under Kotagarh block since 2015 and their daughter has completed B.Tech. He also submitted that they are residing in the house constructed by the Petitioner availing the loan from the bank. It is her

deposition that two rooms of the said house can be rented out. Referring to deposition of their son-Debi Prasad Pradhan, learned counsel for the Petitioner submits that two rooms of the said house were given on rent till 2020. He further submitted that the Petitioner is not allowed to enter upon the said house. Although gross salary of the Petitioner is Rs.52,000/- per month, but he is receiving only Rs.7,761/- after voluntary/involuntary deductions. These material aspects were not taken into consideration by learned Judge, Family Court while determining the monthly maintenance. Hence, the same requires reconsideration.

4. Upon hearing learned counsel for the Petitioner and on perusal of record, it is clear that Opposite Party along with their children are residing in the house constructed by the Petitioner. Two rooms of the said house was rented out till 2020. But it appears that proceeding under Section 125 Cr.P.C. was filed on 23rd December, 2020. It is not disputed that after 2020 the house is not rented out. Deductions towards bank loan cannot be taken into consideration while determining income of the Petitioner. It is only involuntary / statutory deductions that can be taken into consideration while determining the income of a party (husband-Petitioner herein). Law is well-settled in the case of **Kalyan Dey Choudhury Vs. Rita Dey Choudhury Nee Nandy**, reported in AIR 2017 SC 2383 that a wife is entitled to 1/4th income of her husband. Further law is well-settled that a wife is entitled to the maintenance akin to the status that she would have maintained with her husband.

5. Taking into consideration the facts and circumstances of the case and the discussions made in the impugned order, this Court is of the considered opinion that the maintenance awarded is not unreasonable. In that view of the matter, I am not inclined to entertain the RPFAM.

6. Accordingly, the RPFAM stands dismissed being devoid of any merit.

(K.R. Mohapatra)
Judge



s.s.satapathy