

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.13674 OF 2018

Sudhir Kumar Sahoo

....

Petitioner

Mr. Prasanta Kumar Jena, Advocate

-versus-

Pravati Sahoo

....

Opp. Party

In person

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

23.12.2022

Order No.

4. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition seeks to assail the orders dated 8th March, 2018 and 6th July, 2018 (Annexures-1 and 2) respectively passed by learned Judge, Family Court, Bhubaneswar in I.A. No. 1 of 2017 (arising out C.P. No. 297 of 2016).
3. Mr. Jena, learned counsel submits that the Petitioner has filed an application under Section 13(1) of the Hindu Marriage Act, 1955 (for short 'the Act') for dissolution of marriage with Opposite Party by a decree of divorce. The Opposite Party on her appearance filed an application under Section 24 of the Act in which *pendente lite* maintenance of Rs.15,300/- per month has been awarded in favour of Opposite Party and two of her daughters. At the time of adjudication of the application under Section 24 of the Act, the Petitioner was working as a teacher. Although a sum of Rs.7,000/- per month has been awarded in favour of Opposite Party in a petition under Section 125 Cr.P.C., learned Judge, Family Court, Bhubaneswar did not set off the said

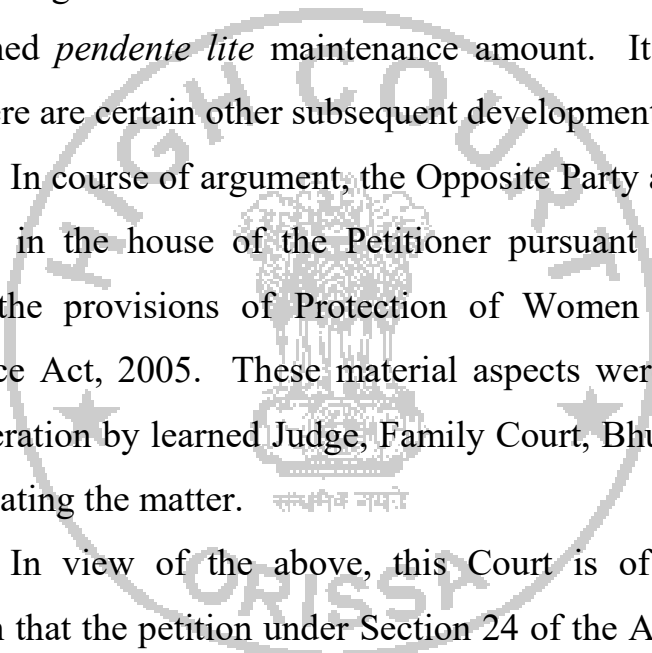
amount from the maintenance awarded under Section 24 of the Act. He further submits that after the order under Section 24 of the Act was passed, the Opposite Party along with her younger daughter started residing in the house of Petitioner. The elder daughter is staying with the Petitioner.

4. In view of changed circumstance, the Petitioner filed I.A. No.1 of 2017 to reconsider the quantum of *pendente lite* maintenance granted in favour of Opposite Party and her daughters. Learned Judge, Family Court, Bhubaneswar holding that he has no jurisdiction either to recall or to modify the same rejected the petition. Hence, this writ petition has been filed.

5. The Opposite Party (Pravati Sahu) appears in person by filing a copy of self-attested Adhar Card in Court, which is taken on record. She argued that she does not know the Advocate appearing for her as she had never executed the Vakalatnama. She, however, submits that at the time of consideration of the application under Section 24 of the Act, the salary of the Petitioner was Rs.62,000/- per month. At present, he is drawing salary at Rs.90,000/- per month. Order under Section 24 of the Act was not complied with by the Petitioner for which the Opposite Party had to file an execution case and realize the amount. During pendency of the writ petition, the Petitioner by misguiding the elder daughter has taken her and kept her in a separate house. The aforesaid action of the Petitioner clearly shows that he does not want to comply with the order passed under Section 24 of the Act. Further, there is no provision under the Act either to modify or to recall the order passed under Section 24 of the Act by learned Judge, Family

Court, Bhubaneswar. Hence, learned Judge, Family Court, Bhubaneswar has committed no error in dismissing the petition vide order under Annexure-2. She, therefore, prays for dismissal of the writ petition.

6. Taking into consideration the rival contentions of the parties, this Court finds that although the Family Court has discussed about the order of maintenance under Section 125 Cr.P.C. that the Opposite Party is in receipt of, but did not record any finding as to whether the same has been set off from the impugned *pendente lite* maintenance amount. It further appears that there are certain other subsequent developments.

7. In course of argument, the Opposite Party admits that she is staying in the house of the Petitioner pursuant to the direction under the provisions of Protection of Women from Domestic Violence Act, 2005. These material aspects were not taken into consideration by learned Judge, Family Court, Bhubaneswar while adjudicating the matter. 

8. In view of the above, this Court is of the considered opinion that the petition under Section 24 of the Act requires fresh consideration. Accordingly, the impugned orders under Annexures-1 and 2 are set aside and the matter is remitted back to the learned Judge, Family Court, Bhubaneswar for fresh adjudication of the petition under Section 24 of the Act in accordance with law, giving opportunity of hearing to the parties concerned. For sustenance of Opposite Party, the Petitioner shall go on paying Rs.15,300/- per month to the Opposite Party till disposal of the petition under Section 24 of the Act without

prejudice to the case of either parties in the petition under Section 24 of the Act. This arrangement is made only for the time being, without delving into the merits of the case of either parties in the petition under Section 24 of the Act.

9. In order to avoid delay in disposal of the petition under Section 24 of the Act, i.e. I.A. No.1 of 2017 (arising out of C.P. No.297 of 2016), parties are directed to appear before learned Judge, Family Court, Bhubaneswar on 16th January, 2023 to receive further instruction in the matter. Learned Judge, Family Court, Bhubaneswar shall also make an endeavour for early disposal of Civil Proceeding.

10. With the aforesaid direction and observation, this writ petition is disposed of.

11. The interim order dated 23rd August, 2018 passed in I.A. No. 11391 of 2018 stands vacated.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

bks