

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No.172 OF 2016

Tabruk Khan

..... Petitioner

Mr. Arun Kumar Budhia, Advocate

-versus-

Ruksana Bibi

.... Opp. Party

Mr. Sanjib Kumar Bhanjdeo, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

01.08.2022

Order No.

4. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this RPFAM seeks to assail order dated 30th June, 2016 (Annexure-1) passed by learned Judge, Family Court, Khordha in Criminal Petition No.109 of 2013, whereby an application under Section 125 Cr.P.C. filed by the Opposite Party is allowed directing the Petitioner to pay a sum of Rs.3,000/- per month to the Opposite Party towards maintenance from the date of application, i.e., 12th April, 2013.
3. Mr. Budhia, learned counsel for the Petitioner refers to orders dated 10th June, 2016 and 20th June, 2016 passed in Criminal Proceeding No.109 of 2013, which are as follows:-

“Order dated 10.6.2016

Petitioner is present O.P. is absent. One time petition is filed on behalf of O.P. without sign of O.P. Hence it is not maintainable. Put up on 20.6.2016 for appearance of O.P. is last chance. Failing which the O.P. I will be set ex parte.

Order dated 20.6.2016

Petitioner is present. The Judgment is ready in separate sheet and pronounced in the open court. The petition for maintenance u/s. 125 Cr.P.C. is allowed in part on contest against the Opp. party without cost. The Opp. party has to pay maintenance @ Rs.3,000/- per month to the petitioner from the date of the application i.e. 12.4.2013. The maintenance amount is to be paid in the first week of each successive month starting from the month of July, 2016. The Opp. Party will pay the 1 year maintenance amount in four consecutive equal monthly instalments along with the current maintenance in case, the Opp. Party fails to pay the current as well as arrear maintenance amount as directed above, the petitioner is at liberty to recover the same through the court."

3.1 It is his submission that vide order dated 10th June, 2016, learned Judge, Family Court posted the matter to 20th June, 2016 providing last opportunity to the present Petitioner to appear. However, order dated 20th June, 2016 clearly disclosed that the judgment was made ready on that date and was pronounced only on 30th June, 2016. When the Petitioner was given last opportunity to appear on 20th June, 2016, learned Judge, Family Court could not have made the judgment ready on that date. He, therefore, submits that the entire proceeding in C.P. No.109 of 2013 is vitiated. As such, he prays for setting aside the impugned order under Annexure-1 and remit the matter back to the learned Judge, Family Court, Khordha for fresh adjudication giving opportunity of hearing to the parties concerned.

4. Mr. Bhanjdeo, learned counsel for the Opposite Party submits that the Petitioner was thoroughly negligent in contesting the case before learned Judge, Family Court, Khordha for which he was given last chance to appear on 20th June, 2016. Due to non-cooperation of the present Petitioner,

the impugned order has been passed. It is his submission that the Petitioner has not paid a single pie to the Opposite Party till date. The marriage between the parties is not disputed. He submits that there is no illegality in the impugned order. Even if the Petitioner is given opportunity of hearing he cannot improve upon his case. Since the impugned order is supported by reasons the same warrants no interference.

5. Taking into consideration the submissions of learned counsel for the parties and on perusal of orders dated 10th June, 2016 and 20th June, 2016, it appears that although the present Petitioner (Opposite Party before learned Judge, Family Court) was given last opportunity to appear on 20th June, 2016, but the judgment was ready on that date and was only pronounced on 30th June, 2016. Looking at the irregularities in the proceeding, this Court while issuing notice on 31st August, 2016 directed stay of impugned order under Annexure-1 till the next date, which continued to be in force till date.

6. Upon hearing learned counsel for the parties and on perusal of record, it is clear that the procedure adopted by learned Judge, Family Court, Khordha in disposing of the CP No.109 of 2013 is unknown to law. Accordingly, the impugned order under Annexure-1 is set aside and the matter is remitted back to learned Judge, Family Court, Khordha for fresh adjudication giving opportunity to the Petitioner to file show cause and contest the proceeding.

6.1 In order to avoid further delay parties are directed to appear before learned Judge, Family Court, Khordha on 16th

August, 2022 along with certified copy of this order to receive further instruction in the matter.

7. The RPFAM is disposed of with observation and direction, as aforesaid.

8. Interim order dated 31st August, 2016 passed in Misc. Case No.245 of 2016 stands vacated.

Issue urgent certified copy of the order on proper application.



s.s.satapathy