

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 233 of 2018

Soumya Prakash Parhi

....

Petitioner

Mr. Bibhu Prasad Mohanty, Advocate

-versus-

Amruta Das

....

Opp. Party

Mr. Biswajit Parida, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

04.04.2022

Order No.

15. 1. This matter is taken up through hybrid mode.
2. Petitioner in this RPFAM seeks to assail the order dated 4th May, 2017 passed by learned Judge, Family Court, Bhubaneswar in Cr.P. No.9 of 2014 filed by the Opposite Party under Section 125 Cr.P.C. whereby direction was made to the Petitioner to pay maintenance of Rs.13,500/- per month to the Opposite Party from the date of filing of the application, i.e., 28th January, 2014.
3. Learned counsel for the Petitioner drawing attention of this Court to order dated 21st January, 2017 (Annexure-7) submitted that the Opposite Party filed her evidence affidavit as PW-1 on that date without serving copy of the same on the Petitioner. Thereafter, the matter was adjourned to different dates to serve the copy of evidence affidavit on the Petitioner, but the copy of the same was never served on him. On the other hand, learned Judge, Family Court, Bhubaneswar proceeded with the matter and passed the impugned order on 4th May,

2017. It is his submission that the Petitioner was diligently defending his case before the learned Judge, Family Court, Bhubaneswar, but due to non-service of evidence affidavit on the Petitioner, he could not properly defend his case.

3.1 He also assails the status of the Opposite Party as wife of the Petitioner for which he has filed C.P. No.168 of 2013, which is at present pending before the learned Judge, Family Court, Balasore.

3.2 It is also submitted that the quantum of maintenance awarded is unreasonably inflated and hence, the same requires re-consideration. In that view of the matter he prays for setting aside of impugned order dated 4th May, 2017 and to remit the matter back to learned Judge, Family Court, Bhubaneswar for consideration of the petition filed under Section 125 Cr.P.C. afresh giving opportunity of hearing to the parties concerned.

4. Mr. Parida, learned counsel for the Opposite Party vehemently opposes the above submission. It is his submission that in spite of affording adequate opportunity to the Petitioner he did not cooperate with learned Judge, Family Court, Bhubaneswar for which the Court proceeded with the matter and passed the impugned order. The quantum of maintenance awarded by the learned Judge, Family Court is just and reasonable and requires no interference. He further draws attention of this Court to order dated 14th March, 2017 (Annexure-7) passed by learned Judge, Family Court and submits that on that date the Petitioner was absent on call, for which the Opposite Party examined herself as PW-1. As the Petitioner was absent, evidence of PW-1 was closed and the matter was posted to 31st March, 2017 for argument. At no

stage of the proceeding under Section 125 Cr.P.C. the Petitioner has raised any question/objection with regard to non-compliance of principles of natural justice. Hence, the RPFAM merits no consideration and is liable to be dismissed.

5. Taking into consideration the submissions of learned counsel for the parties, this Court finds that the grievance of the Petitioner in this revision is with regard to non-compliance of principles of natural justice. It is submitted by learned counsel for the Petitioner that the Petitioner was not given reasonable opportunity to cross-examine PW-1 and lead evidence of his own. From the materials available on record, although it is not clear as to whether copy of the evidence affidavit PW-1 was served on the Petitioner, but it appears the Petitioner has not raised any grievance with regard to non-compliance of principles of natural justice at any stage of the proceeding including at the time of argument of the case. Further, the issue raised by learned counsel for the Petitioner requires factual adjudication. Thus, this Court is of the considered opinion that before approaching this Court, the Petitioner ought to have made an endeavour to raise such objection by filing appropriate application before learned Judge, Family Court, Bhubaneswar. Although it is not reflected in the impugned order that the Petitioner was ever set *ex parte*, but on perusal of the impugned order it appears that, the Petitioner had not participated in the proceeding for some reason or the other. Hence, the impugned order is in the nature of an *ex parte* order.

6. In that view of the matter, this Court disposes of the RPFAM with an observation that if the Petitioner so advised, may file an application under Section 126(2) Cr.P.C. before

learned Judge, Family Court, Bhubaneswar to set aside/recall the impugned order and in that event, learned Judge, Family Court, Bhubaneswar may consider the same in accordance with law giving opportunity of hearing to the parties concerned.

7. The RPFAM is disposed of accordingly with the aforesaid observation.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge



s.s.satapathy