

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No. 145 of 2022

Kabita Das and Anr.

.....

Appellants

Mr. K.C. Dash, Advocate

-versus-

Rajib Kumar Mohapatra

.....

Respondent

Mr. B. Mohanty, Advocate

CORAM:

JUSTICE S. TALAPATRA

JUSTICE M.S. SAHOO

ORDER

29.08.2022

Order No.

05.

1. This matter is taken up through hybrid mode.
2. Heard Mr. K.C. Dash, learned counsel appearing for the Appellant as well as Mr. B. Mohanty, learned counsel who has appeared by virtue of the caveat lodged by the Respondent.
3. Since Mr. Mohanty, learned counsel has entered in the appearance in this appeal and has received the notice for the Respondent, the caveat stands discharged.
4. As agreed by the counsel for the parties, this matter is taken up for final disposal, as two short points are involved in this appeal. Those pointes are (i) whether the Appellant is entitled to alimony and if so, to what extent? and (ii) whether their only child can get more maintenance from the Respondent.

5. We have seen the records and the observation made by the Judge, Family Court, Bhubaneswar in the judgment dated 19.05.2022 delivered in Civil Proceeding No.976 of 2017. The said judgment is in under challenge in this appeal. We have also heard the counsel for the parties on those questions. The Judge, Family Court, Bhubaneswar has returned his finding on the Issue No.(v), which reads as follows:

“(v). Is the respondent entitled to get permanent alimony from the petitioner?”

6. It has been observed by the Judge, Family Court, Bhubaneswar at Paragraph-7 of the said judgment as follows:

“7. As per the salary certificate of petitioner for the month of September, 2021, his gross salary was at Rs.90,145,67 paisa. His net salary for that month was at Rs.55,974/-. As per income tax return acknowledgement of the petitioner for the assessment year 2021-22, his total incomes to Rs.8,88,090/- and he has paid taxes of Rs.93,724/-.

Salary slip for the month of June,2021 of the respondent shows that her gross income was at Rs.78,156/- and her net income was at Rs.59,420/-. Income tax returns of the respondent for the assessment year of 2020-21 shows that her net salary was at Rs.10,40,797/- and Rs.85,987/- has been paid towards her income tax.

“Maintenance” in general means keeping something in good condition.

If claimant has independent income and sufficient means of maintaining herself, no amount of maintenance can be granted to her. A wife who is financially weak and economically dependent, is entitled to maintenance. In the instant case, the respondent is found capable enough to maintain her out of her income shown above. Since, respondent has independent income of her own and capable enough to maintain herself, no amount of maintenance or permanent alimony can be granted to her. She is found to be economically more well off than the petitioner. So, the respondent is not entitled to get any maintenance or permanent alimony from the petitioner.”

7. Even though, the Judge, Family Court, Bhubaneswar did not take into consideration the component of preserving the standard of life, as the Appellant has led in the matrimony. We find that the income of the Appellant, who was the Respondent in the proceeding below is almost equal to the Respondent herein. Therefore, we are not inclined to disturb the finding of the Judge, Family Court, Bhubaneswar so far the rejection of claim of alimony is concerned. As the counsel for the parties have agreed, we enhance the maintenance allowance for the child from Rs.6,000/- as provided by the Judge Family Court, Bhubaneswar to the sum of Rs.10,000/-

(Rupees ten thousand) per month. The said sum of maintenance shall be paid by the Respondent within every 7th day of the English calendar month by transferring the said amount to the account of the Appellant.

8. It is made absolutely clear that, the said enhanced maintenance allowance shall be paid from the month of May, 2022.

9. Mr. B. Mohanty, learned counsel appearing for the Respondent has submitted that, the sum amount of Rs.6,000/- was being paid to the bank account of the Appellant. After computing the maintenance allowance at Rs.10,000/- with effect from 01.05.2022, the arrear maintenance allowance shall be paid by the 7th September, 2022 along with the regular monthly maintenance allowance, as directed by us.

10. Having observed thus, this appeal stands partly allowed.

11. Draw the decree accordingly.

12. LCRs, if procured, be returned forthwith.

13. Urgent certified copy of this order be granted as per rules.

(S. Talapatra)
Judge

(M.S. Sahoo)
Judge