

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 19217 OF 2022

Madhusmita Samant

....

Petitioner

Mr. Jaydeep Pal, Advocate

-versus-

Rajesh Singh

....

Opp. Party

Mr. Bibekananda Bhuyan, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

16.12.2022

Order No.

6. 1. This matter is taken up through hybrid mode.
2. Mr. Bhuyan, learned counsel enters appearance on behalf of Opposite Party by filing Vakalatnama in Court, which is taken on record. Vakalatnama of Golekh Chandra Singh is ignored.
3. Order dated 15th July, 2022 (Annexure-9) passed by learned Judge, Family Court, Cuttack in CMA No. 63 of 2018 (arising out of C.P. Nos.153 and 531 of 2009) is under challenge in this writ petition, whereby an application filed by the Petitioner under Section 24 of the Hindu Marriage Act, 1955 (for short 'the Act') has been rejected.
4. Mr. Pal, learned counsel for the Petitioner submits that C.P. No. 153 of 2009 has been filed by Opposite Party under Section 13(1) of the Act for dissolution of marriage by a decree of divorce. The Petitioner has also filed an application under Section 9 of the Act for restitution of conjugal rights (C.P. No. 531 of 2009). In C.P. No. 153 of 2009, the Petitioner filed an application under Section 24 of the Act, which was registered as CMA No. 63

of 2018. Learned Judge, Family Court, Cuttack vide order dated 19th April, 2019 under Annexure-3 disposed of the said CMA rejecting the prayer made by the Petitioner. Assailing the same, the Petitioner preferred W.P.(C) No.8439 of 2019, which was disposed of vide order dated 21st December, 2021 with the following direction:

“Court has perused impugned order. It is clear that petitioner’s prayer for grant of interim maintenance was rejected by reason of the learned Court below finding there was suppression. Said Court cannot be faulted. However, petitioner pleads inadvertent error in omitting to disclose not only the order but also her contention that nothing was paid pursuant thereto. In the circumstances, impugned order is set aside and the application for interim maintenance made by the petitioner restored. The Family Court will obtain satisfaction on whether petitioner was paid any amount pursuant to the order made under the Act of 2005 and if made, same may be factored into quantum of maintenance that the Court may grant. If it decides not to grant, said Court will obviously say so.

Consequently, learned Judge, Family Court, Cuttack considering the application afresh passed the impugned order.

5. It is further submitted by Mr. Pal, learned counsel for the Petitioner that direction given by this Court in W.P.(C) No.8439 of 2019 has not been complied with at all. No finding whatsoever has been recorded whether the Petitioner has received any amount of maintenance pursuant to order passed under the provisions of Protection of Women from Domestic Violence Act, 2005 (for short ‘the D.V. Act’). The impugned order is cryptic and non-speaking one and an outcome of non-application of judicial mind of the Court. It is his submission that in the petition under Section 24 of the Act, the Petitioner has categorically stated that she is leading a

penniless life and is not in a position to meet her legal expenses. Learned Judge, Family Court, Cuttack did not at all make any endeavour to delve into the merit of the case. Hence, the impugned order under Annexure-9 is not sustainable and is liable to be set aside.

6. Mr. Bhuyan, learned counsel for the Opposite Party vehemently objects to the same and submits that in the petition under Section 24 of the Act, the Petitioner has categorically stated that the Opposite Party has been directed to pay maintenance @ Rs.35,000/- per month (Rs. 25,000/- per month as maintenance + Rs.10,000/- per month towards separate residence) in a proceeding under Section 23 of the D.V. Act. There is no material on record to show that the same is not sufficient for her sustenance. That being an executable order, alleged non-payment of the same cannot be a ground to entertain an application under Section 24 of the Act. If an application under Section 24 of the Act is entertained, it will be a bounty to the Opposite Party, which she is not entitled to. Learned Judge, Family Court, Cuttack recording the same, though not in too many words, has rejected the petition under Section 24 of the Act. He, therefore, submits that learned Judge, Family Court, Cuttack discussing the award of maintenance under the D.V. Act, passed an order denying maintenance under Section 24 of the Act in absence of any pleading to the effect that the same is not sufficient for her sustenance.

7. Considering the submissions made by learned counsel for the parties and on perusal of the record, it appears that this Court in W.P.(C) No. 8439 of 2019 vide order dated 21st December, 2021 (Annexure-4) has specifically directed the learned Judge, Family

Court, Cuttack to consider the application under Section 24 of the Act afresh recording his satisfaction as to whether the Petitioner was paid any maintenance pursuant to the order passed in a proceeding under the D.V. Act and if such an amount is paid, the same may be factored into the quantum of maintenance, but no such finding has been recorded by him. Section 24 of the Act has been enacted to save the applicant from penury. In the instant case, the Petitioner alleges that no maintenance as directed to be paid in a proceeding under the D.V. Act has been paid to her. Hence, this Court is of the considered opinion that learned Judge Family Court, Cuttack should have discussed and scrutinized the rival contentions of the parties and recorded finding to that effect. As such, the impugned order under Annexure-9 is set aside and the matter is remitted back to consider the petition under Section 24 of the Act afresh. While adjudicating the matter, learned Judge, Family Court, Cuttack should be careful in complying with the direction of this Court in W.P.(C) No. 8439 of 2019 in its letter and spirit by affording opportunity of hearing to the parties concerned.

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

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

(K.R. Mohapatra)
Judge

bks