

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM NO. 215 OF 2019

Pradip Kumar Mishra ***Petitioner***

Mr. Banamali Shoo, Advocate

-versus-

Namita Dash and another ***Opp. Parties***

Mr. Durga Prasad Dhal, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

28.11.2022

Order No.

RPFAM NO. 215 OF 2019

& I.A. No. 225 of 2022

6. 1. This matter is taken up through hybrid mode.
2. I.A. No.225 of 2022 is listed for vacation of the interim order dated 23rd September, 2019 passed in I.A. No. 423 of 2019. While adjudicating the I.A., this Court feels that the merit of the RPFAM has to be gone into. Hence, on consent of learned counsel for the parties, the RPFAM is taken up for final disposal.
3. The Petitioner in this RPFAM seeks to assail the order dated 5th August, 2019 (Annexure-3) passed by learned Judge, Family Court, Bhubaneswar in C.R.P. No. 153 of 2017, whereby the Petitioner has been directed to pay interim maintenance of Rs.10,000/- per month to the Opposite Parties from the date of the order, i.e. 5th August, 2019 till disposal of the proceeding under Section 125 Cr.P.C.
4. Mr. Sahoo, learned counsel for the Petitioner submits that the marriage between the parties has already been dissolved by a decree of divorce vide judgment dated 13th April, 2018 passed by

learned Judge, Family Court, Bhubaneswar in Civil Proceeding No.636 of 2015, wherein the following order has been passed:

“Marriage between petitioner husband Sri Pradip Kumar Mishra and respondent wife Smt. Namita Dash solemnized on 07.07.2002 stands dissolved by a decree of divorce of subject to payment of rupees five lakhs towards cost of gold ornaments and other lost articles. The decree shall come into force only after deposit of rupees five lakhs by the petitioner husband. Respondent shall allow the petitioner to have interaction with the minor daughter for one and half hour in a month subject to conducive circumstances. Free copy of the order may be furnished to the parties.”

5. Mr. Sahoo, learned counsel for the Petitioner further submits that during pendency of the civil proceeding, the Opposite Parties filed C.R.P. No. 153 of 2017 under Section 125 Cr.P.C. In the said proceeding, the Opposite Parties filed an application for interim maintenance, which was allowed vide order dated 5th August, 2009. The Petitioner is earning his livelihood by private tuition and it would be difficult on his part to pay Rs.10,000/- per month to the Opposite Parties as interim maintenance. Hence, he prays for reconsideration of the amount of interim maintenance.

6. Mr. Dhal, learned counsel for the Opposite Parties submits that no permanent alimony has been granted in favour of Opposite Parties. The Petitioner was directed to pay a sum of Rs.5,00,000/- towards cost of gold ornaments and lost articles. However, the Opposite Party No. 1 does not have any independent source of income. Hence, an application under Section 125 Cr.P.C. has been filed. Learned Judge, Family Court, Bhubaneswar considering the matter from its proper prospective directed the Petitioner to pay interim maintenance of Rs.10,000/- per month to the Opposite Parties. The Petitioner is not taking care of his daughter. Now, the

daughter of the Petitioner is pursuing her Engineering Course. As such, it is very difficult on the part of Opposite Party No.1 to maintain herself along with her daughter. Hence, the interim maintenance of Rs.10,000/- per month directed to be paid by the Petitioner is not excessive.

7. Considering the submissions made by learned counsel for the parties, this Court is of the considered opinion that the Petitioner has not placed any material with regard to his income. It is also evident from the materials available on record that no permanent alimony has been awarded in favour of Opposite Party No.1. The Petitioner was directed to pay a sum of Rs.5,00,000/- towards gold ornaments and lost articles. The daughter of the parties to the proceeding is with Opposite Party No.1. Hence, a sum of Rs.10,000/- per month towards interim maintenance appears to be reasonable in the facts and circumstances of the case, which is subject to the final decision of the proceeding under Section 125 Cr.P.C.. Thus, I am not inclined to interfere with the impugned order. However, expeditious steps should be taken for early disposal of the proceeding under Section 125 Cr.P.C.

8. Accordingly, the RPFAM being devoid of any merit stands dismissed.

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

(K.R. Mohapatra)
Judge

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