

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 19632 OF 2022

Nihar Ranjan Ray

....

Petitioner

Mr. Amit Prasad Bose, Advocate

-versus-

Ananya Routray and another

....

Opp. Parties

Mr. Amiya Kumar Mohanty, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

22.09.2022

Order No.

2. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition prays for a direction to set aside the order dated 11th July, 2022 (Annexure-1) attaching his salary and order dated 22nd July, 2022 (Annexure-3) passed by learned Judge, Family Court, Cuttack refusing to recall the order under Annexure-1 in Civil Execution No. 1 of 2022 (arising out of C.P. No.468 of 2021).
3. Mr. Bose, learned counsel for the Petitioner submits that on 11th July, 2022, a petition for attachment of salary of the Petitioner was filed without serving a copy of the petition on him. However, at 2.00 P.M. a copy of the same was served on him. Although a petition for time was filed by the Petitioner to file objection to the said petition for attachment, learned Judge, Family Court, Cuttack rejected the same due to non-appearance of learned counsel for the Petitioner and directed for attachment of salary of the Petitioner. Further, an application to recall the said order was filed. However, learned Judge, Family Court, Cuttack rejected the same observing that the Petitioner is at liberty to file

petition for recall of the order of attachment by depositing the entire arrear amount. He further submits that if the Petitioner pays the entire arrear amount, then the order of attachment will become infructuous. When a petition was filed for attachment of salary of the Petitioner, he should have been given a reasonable opportunity to file objection to the same before an order of attachment is passed. But, in the instant case, the order of attachment has been passed on the day of filing the petition, without providing an opportunity to file his objection. Hence, the impugned orders are not sustainable and are liable to be set aside.

4. Considering the submission made by learned counsel for the Petitioner, this Court vide order 4th August, 2022 directed that on the Petitioner depositing a sum of Rs.1.00 lakh (one lakh) before learned Judge, Family Court, Cuttack in Execution Case No.1 of 2022 (arising out of C.P. No.468 of 2021) by 12th August, 2022, there shall be stay of orders of attachment of salary of the Petitioner as directed vide orders dated 11th July, 2022 and 22nd July, 2022 till the next date.

5. Mr. Mohanty, learned counsel for the Opposite Parties submits that the execution case should be completed within a period of six months, but it has been sufficiently delayed. He further submits that in absence of any interim order passed by this Court to stay further proceedings of the execution case, the Petitioner has managed to linger the proceeding itself by taking different plea. The Opposite Party No. 1 is a destitute lady and is entitled to maintenance directed to be paid by learned Family Court unless and until it is varied or modified. Since the Petitioner did not pay the arrear dues, the Opposite Parties were constrained

to file application for attachment of salary of the Petitioner and on consideration of the same, learned Judge, Family Court, Cuttack has passed the impugned orders. Hence, the impugned orders warrant no interference.

6. Taking into consideration the submissions made by learned counsel for the parties, this Court without delving into the details of allegations made by the parties feels it proper to give the Petitioner an opportunity to file objection to the petition for attachment of salary. It is moreso because on the date of filing of the petition for attachment of salary of the Petitioner by the Opposite Parties, the order of attachment was passed. In that view of the matter, this Court while setting aside the impugned orders under Anenxures-1 and 3 directs the Petitioner to file objection to the petition for attachment of salary within a period of ten days hence along with deposit of Rs.50,000/- (Rupees fifty thousand) in Civil Execution No. 1 of 2021. In that event, learned Judge, Family Court, Cuttack shall hear the objection and pass a reasoned order thereon giving opportunity of hearing to the parties concerned.

7. In order to avoid further delay in the matter, this Court directs the parties to appear before learned Judge, Family Court, Cuttack on 27th September, 2022 to receive further instruction in the matter.

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

(K.R. Mohapatra)
Judge

bks