

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 4 OF 2013

Smt. Gitanjali Dakua

....

Petitioner

Mr. Tusar Kumar Mishra, Advocate

-versus-

Udaya Chandra Dakua

....

Opp. Party

Mr. S. Mohapatra, Advocate

on behalf of Mr. S.K. Dash, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

14.12.2022

Order No.

2. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this RPFAM seeks to assail the order dated 20th December, 2012 (Annexure-1) passed by learned Judge, Family Court, Berhampur in Cr.P. No.1659 of 2010, whereby the Opposite Party has been directed to pay maintenance @ Rs.4,000/- per month to the Petitioner from the date of the order.
3. Mr. Mishra, learned counsel for the Petitioner submits that the Opposite Party at the relevant time was working as an Assistant Teacher in a Govt. U.P. School and was earning more than Rs.28,000/- per month from his salary and agriculture. Without considering the same, learned Judge, Family Court relying upon the salary certificate of the Opposite Party, marked as Ext.1, held that the monthly net salary of the Opposite Party is Rs.13,841/- and accordingly directed to pay Rs.4,000/- per month as maintenance to the Petitioner. It is his submission that learned Judge, Family Court ought to have taken into

consideration the agricultural income of the Opposite Party while determining the quantum of maintenance. That having not been done, the quantum of maintenance requires re-consideration. Further the maintenance should have been allowed from the date of application and not from the date of the order, as directed. Hence, he prays for modification of the impugned order under Annexure-1 to that effect.

4. Mr. Mohapatra, learned counsel appearing on behalf of Mr. Dash, learned counsel for the Opposite Party submits that taking into consideration the relevant factors and materials on record, the impugned order under Annexure-1 has been passed directing the Opposite Party to pay maintenance from the date of the order. Hence, the impugned order under Annexure-1 warrants no interference.

5. Considering the rival contentions of the parties, this Court finds that Ext.1, salary certification of the Opposite Party for the relevant period clearly discloses that his gross income was Rs.19,201/- per month and his net salary was Rs.13,841/- per month after statutory deduction. No material to the effect that the Opposite Party had income from the agriculture was produced. Hence, I don't find any infirmity to the finding with regard to the income of the Opposite Party.

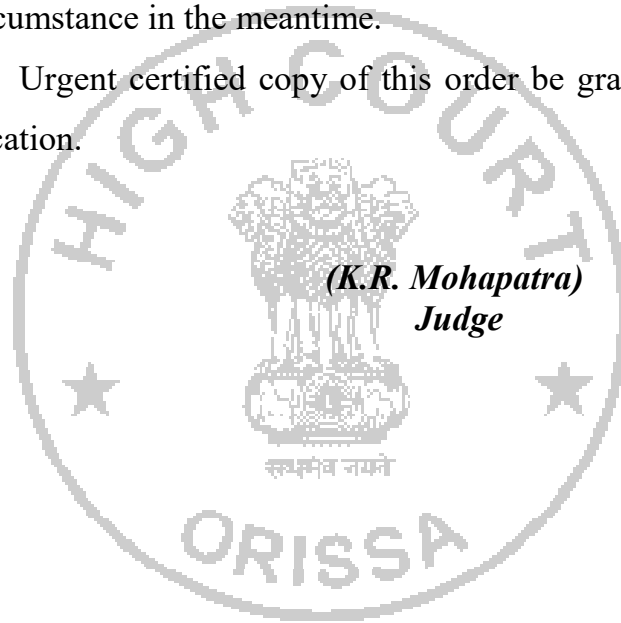
6. Further, in view of the Section 125(3) Cr.P.C., the maintenance should have been allowed from the date of application unless there is compelling reason to be recorded by the Court while passing the order of maintenance under Section 125 Cr.P.C. to award the same from a subsequent date. In instant case, no such instance has been recorded by learned

Judge, Family Court directing the Opposite Party to pay the maintenance from the date of the order.

7. Hence, the RPFAM is disposed of with a direction that the Petitioner is entitled to Rs.4,000/- per month as maintenance from the date of application. The impugned order under Annexure-1 is modified to the aforesaid extent.

8. It is, however, open to the Petitioner to seek for alteration of the order of maintenance by making proper application before learned Judge, Family Court, Berhampur, if there is any change in circumstance in the meantime.

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



ms