

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**RPFAM NO. 221 OF 2019**

***Santosh Kumar Malla***

....

***Petitioner***

Mr. Prasanta Kumar Nanda, Advocate

*-versus-*

***Sasmita Samal***

....

***Opp. Party***

Mr. P.C. Dash, Advocate

**CORAM:**

**JUSTICE K.R. MOHAPATRA**

**ORDER**

**20.10.2022**

**Order No.**

**I.A. No. 405 of 2019**

5.        1.        This matter is taken up through hybrid mode.
2.        This is an application for condonation of delay of 156 days in filing the RPFAM.
3.        Mr. Nanda, learned counsel for the Petitioner submits that since an endeavour for settlement of the dispute was being undertaken, there is some delay in filing the RPFAM.
4.        Mr. Dash, learned counsel for the Opposite Party objects to the same and submits that the averments made in this application are blatant lie and no endeavour at any point of time was made for conciliation of the matter. He also submits that there is outstanding arrear amount of Rs.5,35,000/- to be paid by the Petitioner. He, therefore, prays for dismissal of I.A.
5.        Taking into consideration the submissions made by learned counsel for the parties and the fact that there is a delay of 156 days in filing the RPFAM, this Court feels that delay should be condoned and the matter should be heard on merit. Accordingly, delay in filing RPFAM is condoned.

6. The I.A. is accordingly disposed of.

**(K.R. Mohapatra)**  
**Judge**

**RPFAM NO. 221 OF 2019**

- 6.
1. This matter is taken up through hybrid mode.
  2. On consent of learned counsel for the parties, this matter is taken up for final disposal.
  3. The Petitioner in this RPFAM seeks to assail the order dated 11<sup>th</sup> January, 2019 (Annexure-1) passed in Criminal Proceeding No. 748 of 2013, whereby learned Judge, Family Court, Kendrapara directed him to pay a sum of Rs.6,000/- per month to the Opposite Party from the date of filing of the proceeding, i.e. 28<sup>th</sup> January, 2014.
  4. The main contention of Mr. Nanda, learned counsel is that the Petitioner is earning Rs.16,000/- per annum as a labourer and has obtained a certificate to that effect from the concerned Tahasildar in the year, 2017. That aspect was not taken into consideration by learned Judge, Family Court, Kendrapada. He also submits that although the Opposite Party alleges that the Petitioner is earning Rs.40,000/- per month from contract business, but there is no evidence to that effect. He further submits that burden lies on the Opposite Party, who alleges that the Petitioner is earning Rs.40,000/- per month. Thus, learned Judge, Family Court, Kendrapada should not have believed the same and directed the Petitioner to pay a sum of Rs.6,000/- per month to the Opposite Party as maintenance.

5. Mr. Dash, learned counsel for the Opposite Party submits that the Petitioner is, in fact, earning a handsome amount of more than Rs.40,000/- per month at the relevant time from contract business. Hence, learned Judge, Family Court, Kendrapada has committed no error in directing the Petitioner to pay maintenance of Rs.6,000/- per month to the Opposite Party.

6. Taking into consideration submissions made by learned counsel for the parties, this Court finds that although a contention was raised to the effect that the Petitioner is earning Rs.16,000/- per annum and a certificate to that effect was granted by the concerned Tahasildar in the year, 2017, but the same was not exhibited for the reason best known to the Petitioner. The income of Petitioner is in his special knowledge and he has to lead evidence to that effect. In absence of any concrete evidence with regard to the income of the Petitioner and the evidence of Opposite Party to the extent that the Petitioner is earning Rs.40,000/- per month from contract business, which have not been successfully challenged, this Court is of the considered opinion that learned Judge, Family Court, Kendrapada has committed no error in directing the Petitioner to pay Rs.6,000/- per month to the Opposite Party as maintenance.

7. 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**

*bks*