

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM NO. 56 OF 2021

Pitabasa Behera

....

Petitioner

Miss Deepali Mohapatra, Advocate

-versus-

Satish Chandra Behera and others

....

Opp. Parties

Mr. Bhabani Prasad Pradhan, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

28.09.2022

Order No.

1. This matter is taken up through hybrid mode.
2. The Petitioner in this RPFAM seeks to assail the order dated 29th July, 2021 passed by learned Judge, Family Court, Phulbani in CRP No. 67 of 2019, whereby the Petitioner has been directed to pay a sum of Rs.5,000/- per month to the Opposite Party No.2 from the date of application till he attains majority.
3. Miss Mohapatra, learned counsel for the Petitioner submits that the Petitioner No.2 is born out of the wedlock with the first wife of Petitioner. The minor child is residing with his grandparents. After the death of first wife, the Petitioner has married for the second time and is residing separately. An application under Section 125 Cr.P.C. in CRP No. 67 of 2019 was filed by the father of Petitioner along with minor child claiming maintenance under Section 125 Cr.P.C. Learned Judge, Family Court, Phulbani while rejecting the prayer for grant of maintenance to the Opposite Party No.1 as he was a Government servant and is receiving pension, directed the Petitioner to pay a sum of Rs.5,000/- to the Opposite Party No.2 till he attains majority along

with other directions. It is her submission that admittedly the Petitioner is paying school fees, Bus fare as well as premiums for the policies purchased by the Petitioner in the name of his minor son (Opposite Party No.2). Although learned Judge, Family Court, Phulbani has referred to those Exts., but has not taken into consideration the payment made by the Petitioner for the benefit of Opposite Party No.2. She further submits that the Petitioner being the father of minor child (Opposite Party No.2) is under legal obligation to maintain him, but, at the same time the Petitioner is maintaining his family and also looking at the welfare of minor child. Thus, the matter requires fresh consideration.

4. Mr. Pradhan, learned counsel appearing for the Opposite Parties submits that the Petitioner has not paid a single pie pursuant to the direction of learned Judge, Family Court, Phulbani. He further submits that taking into consideration the materials available on record, learned Judge, Family Court, Phulbani has awarded a maintenance, which is just and reasonable and warrants no interference. The Opposite Party No.2 is pursuing his studies in a Public School at Phulbani and his study expenses are increasing day by day. The grandfather of Opposite Party No.2 is a retired Government servant and has no sufficient means to meet the expenses of Opposite Party No.2. Hence, the impugned order warrants no interference.

5. Taking into consideration the submissions made by learned counsel for the parties and on perusal of the record, it appears that although learned Judge, Family Court, Phulbani has referred to the policies purchased in the name of Opposite Party No.2 but has not taken into consideration the amount paid by the

Petitioner in respect of the said policies. It appears that the Petitioner is paying Rs.1404.63 per month towards LIC premium for the Opposite Party No.2. He is also paying a sum of Rs.17,662/- and Rs.15,624/- per annum for SBI Life Insurance Policies purchased in the name of Opposite Party No.2. Referring to the documents filed by the Petitioner, Miss Mohapatra, learned counsel also submits that the Petitioner is paying the school fees as well as Bus fare for the Opposite Party No.2. These material aspects were not discussed by learned Judge, Family Court, Phulbani while adjudicating CRP No. 67 of 2019. Thus, the matter requires fresh consideration.

6. In that view of the matter, this Court sets aside the order 29th July, 2021 passed by learned Judge, Family Court, Phulbani in CRP No. 67 of 2019 and remits the matter back to the learned Judge, Family Court, Phulbani for fresh adjudication on the materials available on record, giving opportunity of hearing to the parties concerned. It is further directed that the Petitioner shall go on paying a sum of Rs.3,000/- to the Opposite Party No.2 till disposal of CRP No. 67 of 2019, which shall be subject to the result of the said petition.

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

bks

(K.R. Mohapatra)
Judge