

IN THE HIGH COURT OF ORISSA AT CUTTACK
RPFAM NO. 57 OF 2021

Anupam Sethi @ Anupam Sethy @ Sahoo **Petitioner**

Mr. Tusar Kumar Mishra,
Advocate

-versus-

Rajalaxmi Behera

.... **Opp. Party**
Mr. Niranjana Rout, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
23.03.2022

Order No.

13. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this RPFAM seeks to assail the order dated 12th April, 2021 (Annexure-3) passed in Criminal Proceeding No. 437 of 2014, whereby learned Judge, Family Court, Cuttack directed the Petitioner to pay a monthly maintenance of Rs.10,000/- to the Opposite Party from the date of filing of the application under Section 125 Cr.P.C.
3. Mr. Mishra, learned counsel for the Petitioner submits that due to personal difficulty of the learned counsel engaged by the Petitioner, he could not attend the court for which the case of the Petitioner could not be defended. After the Petitioner was set *ex parte*, the Opposite Party filed an application for amendment of the petition under Section 125 Cr.P.C., which was allowed. Learned Judge, Family Court, Cuttack without directing the Opposite Party to adduce evidence in support of the amended

petition proceeded to hear the matter on merit and passed the impugned order. He further submits that the Petitioner is serving as a Helper under a carpenter and is not in a position to pay such huge amount to the Opposite Party. As such, he prays for setting aside the impugned order and to remit the matter back to the learned Judge, Family Court, Cuttack for fresh adjudication in accordance with law providing him an opportunity of hearing.

4. Mr. Rout, learned counsel for the Opposite Party refuting such submission contended that the Petitioner was thoroughly negligent in appearing before the court and contesting the case. He was duly served with notice and had entered appearance before learned Judge, Family Court, Cuttack. This RPFAM has been filed only to harass the Opposite Party. Although a sum of Rs.10,000/- per month has been awarded towards maintenance and a sum of more than Rs.10.00 lakh is outstanding towards arrear maintenance, the Petitioner has only paid a sum of Rs.4,00,000/- as per the direction of the court.

5. In view of the above as well as the conduct of the Petitioner, he does not deserve any sympathy from this Court.

6. Taking into consideration the submissions of learned counsel for the parties, it is apparent that the Petitioner seeks to assail the *ex parte* order of maintenance awarded in favour of Opposite Party by learned Judge, Family Court, Cuttack in Criminal Proceeding No. 437 of 2014.

7. Mr. Mishra, learned counsel for the Petitioner fairly concedes that no petition under Section 126 Cr.P.C. has been filed to set aside the *ex parte* order under Annexure-3.

8. In that view of the matter, this Court is of the considered opinion that before approaching this Court in assailing the order under Annexure-3, the Petitioner ought to have filed an application under Section 126 Cr.P.C. to set aside the *ex parte* order passed against him.

9. In view of the above, this RPFAM is disposed of with an observation that the Petitioner, if so advised, may file an application under Section 126 Cr.P.C. within a period of three weeks from today seeking to set aside the *ex parte* order under Annexure-3 and in that event, learned Judge, Family Court, Cuttack shall do well to consider the same in accordance with law giving opportunity of hearing to the parties concerned.

10. It is further made clear that such an application, if filed within the stipulated time, may be entertained subject to the condition that the Petitioner goes on paying a sum of Rs.6,000/- (Rupees six thousand) per month to the Opposite Party towards maintenance. During pendency of the petition under Section 126 Cr.P.C., further proceedings in Execution Criminal Proceeding No.20 of 2021 shall remain stayed.

11. The case record of CRLMP No. 2051 of 2021 be returned to the concerned section.

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

(K.R. Mohapatra)
Judge

bks