

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) NO. 18956 OF 2019

Nirodhalini Kar

.... ***Petitioner***

Mr. Asutosh Mishra, Advocate

-versus-

Satya Shiva Saswat

.... ***Opp. Party***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
22.03.2022

Order No.

3. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition seeks to assail the order dated 26th August, 2019 (Annexure-2) passed in I.A. No. 52 of 2017 (arising out of C.P. No. 783 of 2016), whereby learned Judge, Family Court, Bhubaneswar allowed an application under Section 24 of the Hindu Marriage Act, 1955 (for short 'the Act') directing the Opposite Party to pay a *pendente lite* maintenance @ Rs.10,000/- per month to the Petitioner from the date of the order i.e. from 26th August, 2019, till disposal of the case.
3. Mr. Mishra, learned counsel for the Petitioner submits that the Petitioner is serving as a Lecturer and her net salary is Rs.4,488/- per month. On the other hand, at the relevant time, the Opposite Party was serving as Assistant General Manager, EXIM Bank (Export-Import Bank of India) at Mumbai and was earning more than Rs.1,00,000/- per month. The Petitioner also filed the salary certificate of Opposite Party, which discloses that his income was more than Rs.1,50,000/- per month. The said document was not taken into consideration by learned Judge, Family Court, Bhubaneswar while adjudicating the matter. Learned Judge, Family

Court, Bhubaneswar only taking into consideration the admission of Opposite Party to the effect that he was earning Rs.60,000/- per month directed to pay a sum of Rs.10,000/- per month to the Petitioner towards *pendente lite* maintenance. It is his submission that in the case of ***Kalyan Dey Choudhury –v- Rita Dey Choudhury Nee Nandy***, reported in (2017) 14 SCC 200, it is held that the wife is entitled to 1/4th income of the husband towards her maintenance and in the case of ***Rajnish –v- Neha and another***, reported in (2021) 2 SCC 324, it is held that the maintenance should be awarded from the date of filing of the application and not from the date of the order. Mr. Mishra, learned counsel, therefore, submitted that since the Petitioner submitted her application under Section 24 of the Act on 26th April, 2017, she is entitled to *pendente lite* maintenance with effect from that date. It is his submission that looking at the requirement of the Petitioner, the maintenance awarded is grossly insufficient. In that view of the matter, he prays for modification of the impugned order under Annexure-2 and to enhance the maintenance amount.

4. Although the Opposite Party is represented through learned counsel, but none appears at the time of hearing.

5. Taking into consideration the submission of Mr. Mishra, learned counsel for the Petitioner and on perusal of the record, it appears that learned Judge, Family Court, Bhubaneswar while considering the matter has categorically held that although the Petitioner claimed that the Opposite Party was getting a monthly salary of more than Rs.1,00,000/-, but no document in support of the same was filed by her. On the other hand, the Opposite Party himself admitted that he was drawing a monthly salary of Rs.60,000/-. Taking into consideration the same, learned Judge,

Family Court, Bhubaneswar has awarded a sum of Rs.10,000/- per month towards *pendente lite* maintenance.

6. In view of the ratio decided in the case of **Kalyan Dey Choudhury** (supra), the Petitioner is entitled to at least 1/4th of the salary of the Opposite Party towards her maintenance. The document (salary slip) of the Opposite Party filed by the Petitioner in this Court cannot be taken into consideration, as the same relates to the period subsequent to the date of the impugned order. However, looking at the requirement of the Petitioner, the maintenance awarded in her favour requires enhancement.

7. Further, it is observed that *pendente lite* maintenance has been awarded from the date of the order i.e. from 26th August, 2019, but in view of the ratio decided in the case of **Rajnish** (supra), it has been categorically held that the maintenance should be awarded from the date of filing of the application. It is also observed therein that principle of awarding maintenance in a petition under Section 125 Cr.P.C. is also applicable to the petition under Section 24 of the Act. Hence, the Petitioner is entitled to *pendente lite* maintenance from the date of filing of the application, i.e. from 26th April, 2017.

8. In view of the above, the impugned order under Annexure-2 is modified to the extent that the Petitioner is entitled to *pendente lite* maintenance of Rs.15,000/- (Rupees fifteen thousand) per month from the date of filing of the application under Section 24 of the Act, i.e. from 26th April, 2017.

9. With the aforesaid modification in the impugned order, this writ petition is disposed of.

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

(K.R. Mohapatra)
Judge