

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2472 of 2022

Biswajyoti Jena

....

Petitioner

Mr. Brahmananda Tripathy, Advocate

-Versus-

Sanjukta Lima

....

Opposite Party

Mr. S.K. Dash, Advocate

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

20.09.2022

Order No.

01.

1. Mr.Soubhagya Kumar Dash, Advocate has entered appearance for the opposite party and files his Vakalatnama in Court today, which is taken on record.

2. The name of Mr. S.K. Dash, Advocate for opposite party be reflected in the brief as well as in the cause list.

3. Heard learned counsel for the petitioner and learned counsel for the opposite party.

4. Instant petition under Section 482 Cr.P.C. is filed by the petitioner challenging the impugned order dated under Annexure-5 declining to enhance the quantum of maintenance filed under Section 127 Cr.P.C. by the opposite party in view of the pendency of Civil Proceeding No.49 of 2022 which is with regard to validity of marriage. It is further submitted that the petitioner is regularly paying the maintenance amount to the opposite party as fixed by the learned court below since 2017. In the meantime, an application for enhancement of quantum of maintenance was filed but the further proceeding in the C.P. No.49 of 2022 is stayed with regard to validity of marriage, which was challenged after a period of six

years. Learned counsel for the petitioner submits that the further proceeding in the said case especially when the marriage is under challenge, the petitioner will be prejudiced. On the other hand, learned counsel for the opposite party strongly objects to the contention of the petitioner and submits that the order of maintenance is of the year 2017 and that apart, the validity of marriage has been questioned therefore learned court below declined to stay the proceeding with regard to maintenance.

5. The Court finds that the petitioner husband paying maintenance from the year 2017 and the opposite party wife applied for enhancement of maintenance amount recently, which is pending consideration. It is also a fact that while challenging the validity of marriage in C.P. No.49 of 2022, a claim for enhancement is bad in law. Accordingly, the Court is of the considered view that the petitioner can raise such grounds at the time of hearing of the proceeding. In other words, the Court does not find any reason to interfere in the impugned order under Annexure-5. Accordingly, it is ordered.

6. Consequently, the application stands disposed of with liberty to the petitioner to raise all such grounds to object the enhancement of maintenance and file objection to the validity of marriage in C.P. No.49 of 2022. In the event so urged, learned court below shall consider the same and pass appropriate order in accordance with law.

7. Issue urgent certified copy as per rules.

(R.K. Pattanaik)
Judge