

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 20606 of 2019

Nisith Pattanaik

.....

Petitioner

Mr. Trilochan Nanda, Advocate

-versus-

Tapasi Das Mohapatra

....

Opp. Party

Ms. Sujata Jena, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

07.09.2022

Order No.

- 7.
1. This matter is taken up through Hybrid mode.
 2. Petitioner in this writ petition seeks to assail the order dated 25th October, 2019 (Annexure-1) passed by learned Judge, Family Court, Bhubaneswar in Civil Execution Case No.24 of 2018, whereby the Petitioner has been directed to pay a sum of Rs.42,183/- to the Opposite Party.
 3. Learned counsel for the Petitioner submits that Civil Proceeding No.283 of 2010 was filed by the Petitioner for divorce. The said Civil Proceeding was allowed. However, and both the parties (Petitioner and Opposite Party) assailed the said order in MATA Nos.20 of 2016 and 21 of 2016 respectively before this Court.
 4. Both the appeals were clubbed up to be taken up together. On 19th February, 2019, both the appeals were disposed of with a direction to the Petitioner herein to pay Rs.30,00,000/- to the Opposite Party herein as permanent alimony. The Petitioner has already paid the said amount to the Opposite Party. In spite of the same, the Opposite Party filed Civil Execution Case No.24 of 2018 for a direction to realize Rs.42,183/- from the present

Petitioner. The said execution proceeding is not at all maintainable, as the Petitioner has already complied with the order passed by this Court in both the aforesaid Matrimonial Appeals. Further, there is no outstanding against the Petitioner to be paid to the Opposite Party. The Petitioner has also filed a detailed objection stating that the Objection case is not maintainable on facts and law. Without considering the same, learned Judge, Family Court, Bhubaneswar directed the Petitioner to pay the aforesaid amount of Rs.42,183/-, which is not at all sustainable in the eyes of law. Hence, the impugned order is liable to be set aside.

5. Ms. Jena, learned counsel for the Opposite Party submits that the writ petition is not maintainable, as the order passed by the learned Judge, Family Court is on the basis of the concession made by learned counsel for the JDr./ Petitioner herein. On the basis of such concession made by learned counsel for the Petitioner/JDr before learned Family Court the impugned order has been passed. Hence, the same warrants no interference.

6. At this stage, learned counsel for the Petitioner submits that the Petitioner has never conceded before learned Family Court to pay Rs.42,183/-, as claimed by learned counsel for the Opposite Party. When the execution case is not maintainable question of concession to the pay the aforesaid amount does not arise.

7. Taking into consideration the submissions of learned counsel for the parties and on perusal of record, it appears that learned Family Court while adjudicating the matter has recorded the concession of learned counsel for the JDr-Opposite Party (Petitioner herein) as he is ready and will to pay the entire

amount, if the Court directs. For better appreciation of facts, relevant portion of the impugned order is quoted below:-

“Admittedly, in the case at hand, the learned counsel for the Jdr-opposite party does not dispute his liability. However, he submits that the Opposite party is not liable to pay Rs.42,183/- as claimed by the petitioner. But, the opposite party is liable to pay Rs.27,183 (Rs.42,183-Rs.15,000) which is disputed by the Dhr-petitioner. The learned counsel for the Jdr-opposite party also fairly submits that he is ready and willing to pay the entire amount, if the Court so directs. Without expressing any opinion regarding the earlier payment of Rs.15,000/- (made in Civil Proceeding No.283 of 2010) and considering the totality of the facts and circumstances of this case and in view of the clear cut and fair submission of the learned counsel for the Jdr-opposite party and for the greater interest of justice, it would be better if the opposite party is directed to pay Rs.42,183 (Rupees forty two thousand one hundred eighty three only) in favour of the Dhr-petitioner in this Execution Proceeding. Accordingly, the Jdr-opposite party is directed to pay Rs.42,183/-(Rupees forty two thousand one hundred eighty three only) in shape of demand draft drawn in favour of the Dhr-petitioner within fifteen days. Put up on 08.11.2019 for making payment by the Jdr-opposite party.”

It appears that the impugned order has been passed on the concession made by learned counsel for the Petitioner (JDr before the learned Family Court) to pay the amount, if the Court so directs. It is trite law that if the Petitioner has any objection to correctness of such recording by learned Family Court, he can move the said Court, which has passed the order. The same cannot be challenged in the present writ petition.

8. In view of the above, the writ petition stands dismissed being devoid of any merit.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge