

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 24625 OF 2022

Mohini Mohan Sahu

....

Petitioner

Mr. B.K. Nayak, Advocate

-versus-

Ranjita Nayak @ Sahu

....

Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

24.09.2022

Order No.

3.
 1. This matter is taken up through hybrid mode.
 2. The Petitioner in this writ petition prays for a direction to set aside the order dated 27th July, 2022 (Annexure-3) passed by learned Judge, Family Court, Deogarh in C.M.A. No. 04 of 2021, whereby the Petitioner has been directed to pay *pendente lite* maintenance of Rs.2,000/- per month to the Opposite Party from the date of the order and has also been directed to pay litigation expenses of Rs.10,000/- to the Opposite Party.
 3. Mr. Nayak, learned counsel for the Petitioner submits that the Opposite Party is the legally married wife of Petitioner and they are blessed with a daughter, who is staying with the Petitioner and is pursuing her studies in Deogarh College. The Opposite Party had earlier filed Crl. Misc. Case No. 35 of 2019 under the provisions of Protection of Women from Domestic Violence Act, which was dismissed vide order dated 22nd June, 2016 holding that the Opposite Party left the company of the Petitioner voluntarily and no ill-treatment was made on her. She had also filed Civil Suit (MAT) No.7 of 2015 in the court of learned Senior Civil Judge,

Deogarh under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act'), which was dismissed vide order dated 26th March, 2016. Both the orders remained unassailed. Subsequently, the Petitioner filed a suit for dissolution of marriage under Section 13(1) of the Act. In the said suit, the Opposite Party filed CMA No. 11 of 2021 under Section 24 of the Act. Upon establishment of the Family Court, Deogarh, the suit was transferred to the Family Court and said CMA was renumbered as CMA No. 4 of 2021. The Opposite Party is serving as a staff Nurse and has independent source of income. On the other hand, the Petitioner is very poor and is taking care of his daughter, who is pursuing her studies in Deogarh College. These material aspects were not taken into consideration by learned Judge, Family Court, Deogarh while adjudicating the application under Section 24 of the Act. Hence, the impugned order is not sustainable and is liable to be set aside.

4. Upon hearing learned counsel for the Petitioner and on perusal of the materials on record, it appears that although the Petitioner had taken a plea that the Opposite Party is serving as a staff Nurse, but no document to that effect was filed. Further, no document with regard to the income of the Petitioner was also filed. Hence, in absence of any material with regard to the income of both the Petitioner and Opposite Party, learned Judge, Family Court, Deogarh taking into consideration that the Petitioner is taking care of his daughter and making a guess work with regard to the income of the Petitioner directed him to pay *pendente lite* maintenance of Rs.2,000/- per month to the Opposite Party from the date of the impugned order.

5. In view of the discussions made above, I find no infirmity in the impugned order. Accordingly, this writ petition being devoid of any merit stands dismissed.

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

(K.R. Mohapatra)
Judge

bks

