

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.28037 OF 2022

Mihir Kumar Swain

....

Petitioner

Mr. Brahmananda Tripathy, Advocate

-versus-

Bishnupriya Swain

....

Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

25.11.2022

Order No.

1. This matter is taken up through hybrid mode.
2. Order dated 27th September, 2022 (Annexure-3) passed by learned Judge, Family Court, Jagatsinghpur in C.P. No.266 of 2021 is under challenge this writ petition, whereby the Petitioner has been directed to pay *pendente lite* maintenance of Rs.3,000/- per month to the Opposite Party from the date of application, i.e. 12th April, 2022 and also to pay litigation expenses of Rs.5,000/-
3. Mr. Tripathy, learned counsel for the Petitioner submits that the relationship between the parties is not disputed. The Opposite Party is receiving a sum of Rs.4,000/- per month as maintenance pursuant to the order passed in D.V.Misc. Case No. 767 of 2016 initiated under Section 12 of Protection of Women from Domestic Violence Act, 2005. As per the direction of this Court, the Petitioner has also paid a sum of Rs.1,00,000/- to the Opposite Party. He further submits that the Petitioner is jobless and a sum of Rs.3,000/- per month over and above Rs.4,000/- per month is harsh to the Petitioner and he is not in a position to pay the same. Learned Judge, Family Court, Jagatsinghpur although discussed the same but while determining the quantum

of maintenance did not at all take the same into consideration. It is his submission that the civil proceeding is at the stage of trial and evidence on behalf of the Petitioner has already been closed. The Opposite Party without cooperating with learned trial Court for disposal of the civil proceeding has filed an application only to extract money from the Petitioner. Hence, the impugned order is liable to be set aside.

4. Considering the submission made by learned counsel for the Petitioner and on perusal of the record, it appears that the Petitioner was directed pay Rs.4,000/- per month by learned Assistant Sessions Judge, Jagatsinghpur to the Opposite Party in D.V. Misc. Case No.767 of 2016. Since the Petitioner did not pay the same, Execution Case No.32 of 2019 was initiated. Assailing the same, the Petitioner moved this Court in Criminal Revision No.57 of 2021 in which this Court stayed further proceeding of the Execution Case No.32 of 2019 subject to deposit of Rs.1,00,000/- by the Petitioner. Accordingly, a draft of Rs.1,00,000/- has already been handed over by the Petitioner to the Opposite Party. From the aforesaid observation of learned Judge, Family Court, Jagatsinghpur, it appears that even though a direction was made for monetary relief to the Opposite Party, the Petitioner has not paid the same for which the Opposite Party had to initiate execution proceeding.

5. Although it is submitted by learned counsel that the Petitioner is regularly paying Rs.4,000/- per month to the Opposite Party, but there is no material to that effect available on record. Hence, a direction to pay Rs.3,000/- per month to the

Opposite Party towards *pendente lite* maintenance appears to be just and reasonable in the facts and circumstances of the case.

6. In view of the above, this Court while refusing to interfere with the impugned order under Annexure-3 disposes of this writ petition with a direction that if the trial of the civil proceeding has already commenced, learned Judge, Family Court, Jagatsinghpur shall make an endeavour for early disposal of the civil proceeding.

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

bks

(K.R. Mohapatra)
Judge

