

IN THE HIGH COURT OF ORISSA AT CUTTACK
RPFAM No. 294 OF 2022

Satyajit Panda

....

Petitioner

Mr. Kalyan Patnaik, Advocate

-versus-

Puja Mohanty @ Panda and another

....

Opp. Parties

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

23.11.2022

Order No.

1. This matter is taken up through hybrid mode.
2. The Petitioner in this RPFAM seeks to assail the order dated 19th October, 2022 (Annexure-1) passed by learned Judge, Family Court, Jharsuguda in CMC No.02 of 2022, whereby he has been directed to pay maintenance of Rs.15,000/- per month to the Opposite Party No.1 and Rs. 5,000/- per month to Opposite Party No.2 with effect from the date of application i.e. from 27th January, 2022.
3. Mr. Patnaik, learned counsel for the Petitioner submits that the relationship between the parties is not disputed. The Petitioner is serving as an engineer in Bhusan Steel Plant and his gross salary is Rs.50,000/- per month, as admitted by Opposite Party No.1. He is also looking after his ailing old parents. The take home salary of the Petitioner is Rs.25,000/- to Rs.30,000/- per month. Opposite Party No.1 in her deposition has categorically stated that she along with her child is staying at her parental house and her father is taking their entire responsibility. She has started a shop and maintaining themselves. He further

submits that the Petitioner was spending his entire take home salary after the Opposite Parties. Learned Judge, Family Court taking a stray statement of the Petitioner to the effect that he is spending Rs.20,000/- to 25,000/- per month after Opposite Parties, passed the impugned order under Annexure-1. It is his submission that the evidence in toto should have been taken into consideration by learned Family Court while adjudicating of the matter. Due to non-consideration of material evidence, the impugned order has become vulnerable. Hence, the impugned order under Annexure-1 is not sustainable and requires re-consideration.

4. Upon hearing learned counsel for the Petitioner and on perusal of the record, it appears that examination-in-chief of the Petitioner has been annexed to the RPFAM as Annexure-6, in which at Paragraph-10, Opposite Party No.1 has deposed as under:

“10. That staying at my parental house my father had taken all mu responsibility of us. But now he has no source of income for my live hood. I stared a shop and maintaining me and my child.”

5. It further appears that the deposition of the Petitioner has also been annexed to the RPFAM. At paragraphs-4 and 5 of the cross-examination, the Petitioner has deposed as under:

“4. I have passed B. Tech in Mechanical Engineering. My parents live with me. My father was working at Rourkela Steel Plant. The father of the Petitioner No.1 is a retd. MCL employee and gets monthly pension. We have house with concrete roof at Rourkela. At the time of marriage, gold ornaments were given from the side of the bridegroom to me as well as to the Petitioner No.1. I have been doing job since 2009. I get about Rs.25,000/- to Rs.30,000/- as salary per month. It is not a fact that I get salary of

more than Rs.50,000/- per month and that to conceal about my salary, I have not submitted any document regarding the same before the court.

5. I had taken a better accommodation on rent at Jharsuguda after I shifted from Rourkela to live with the petitioners. I always wanted to give a better life to the petitioners and was looking after them properly. I used to spend about Rs.20,000/- to Rs.25,000/- per month after the petitioners. At the time of marriage, my father in law had deposited Rs.3,30,000/- in the account of the Petitioner No.1 which was at UCO Bank, Brajrajnagar Hilltop branch. After marriage, the said account was transferred to Rourkela. It is not a fact that I have withdrawn the said amount on the pretext of investing it in a profitable scheme.”

Drawing attention to the above submission, Mr. Patnaik, learned counsel for the Petitioner submits that learned Judge, Family Court has not considered the matter in its proper perspective and mis-interpreted the statement made by the Petitioner in his deposition.

6. On perusal of the materials on record, it appears that the Opposite Parties are staying separately from the Petitioner. Although the father of Opposite Party No.1 was looking after them, but he has no source of income at present, for which the Opposite Party No.1 had to open a shop to maintain her livelihood. That itself cannot be a ground to reduce the quantum of maintenance. It is, more so, because no endeavour has been made by the Petitioner to bring from her mouth as to what was the income from the said shop.

7. Mr. Patnaik, learned counsel for the Petitioner further submits that reading of Paragraphs-4 and 5 of the cross-examination of the Petitioner makes it clear that he was spending his entire income after the Opposite Parties. The same is not at

all believable in absence of any material to that effect. No material is placed on record with regard to income of the Opposite Parties. A suggestion has also been put to the Petitioner to the effect that he is concealing his actual income, which of course, the Petitioner has denied. It appears that the Petitioner himself has admitted that he is spending Rs.20,000/- to Rs.25,000/- per month for the Opposite Parties. Learned Judge, Family Court taking into consideration the same, has directed to pay a total a sum of Rs.20,000/- per month to the Opposite Parties, as maintenance. When the Petitioner with his income was admittedly spending Rs.20,000/- to Rs.25,000/- per month for the Opposite Parties, there is no reason, as to why, he would feel aggrieved, if a direction is made to pay maintenance @ Rs.20,000/- per month to the Opposite Parties. Appreciating the materials on record, learned Judge, family Court has passed the impugned order under Annexure-1.

8. Only because a second view may be possible by re-appreciating the materials on record, this Court while exercising the power under Section 19(4) of the Family Courts Act, 1984, which is akin to Section 401 of Cr.P.C., should not re-appreciate the evidence and substitute its own finding.

9. In view of the above, I find no infirmity in the impugned order under Annexure-1.

10. Accordingly, this RPFAM being devoid of any merit stands dismissed.

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

(K.R. Mohapatra)
Judge