

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 39820 OF 2021

Dr. Hrushikesh Barik ***Petitioner***

Mr. Samir Kumar Mishra, Advocate

-versus-

Sushma Bhoi @ Smt. Sushama Barik ***Opp. Party***

Mr. Gopal Krushna Mohanty, Advocate

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
14.11.2022**

Order No.

11. 1. This matter is taken up through hybrid mode.
2. Order dated 4th October, 2021 (Annexure-6) passed in I.A. No.05 of 2021 (arising out of MAT Case No.01-55 of 2016) is under challenge in this writ petition, whereby learned Judge, Family Court, Bargarh directed the Petitioner to pay interim maintenance of Rs.20,000/- per month to the Opposite Party with effect from 10th March, 2021, i.e. from the date of filing of the application.
3. Mr. Mishra, learned counsel for the Petitioner submits that the relationship between the parties is not disputed. The Opposite party initially filed an application under Section 25 of the Hindu Marriage Act, 1955 (for short 'the HM Act') and the instant I.A. was filed under Section 24 of the HM Act for *pendente lite* maintenance. Subsequently, the Petitioner filed an application on 3rd January, 2020 challenging the jurisdiction of the Family Court and maintainability of the MAT Case. On receiving the petition, Opposite Party filed a memorandum to

convert the petition under Section 25 of the HM Act to a petition under Sections 18 and 20 of the Hindu Adoption and Maintenance Act, 1956 (for short 'the HAMA Act'). It is his submission that after the petition was registered under the HAMA Act, fresh office note was made and the matter was admitted on 17th August, 2021. Thus, for all practical purposes, the petition under Sections 18 and 20 of the HAMA Act was born on that date only. However, learned Judge, Family Court passed the impugned order under Annexure-6 directing the Petitioner to pay maintenance with effect from 10th March, 2021 i.e. from the date of filing of the petition for *pendente lite* maintenance (I.A. No.05 of 2021) under Section 24 of the HM Act. It is his submission that before 17th August, 2021, there was no proceeding under Sections 18 and 20 of the HAMA Act. Thus, no interim application could have been entertained prior to the said date i.e. 17th August, 2021. Thus, if at all, the Opposite Party is entitled to any interim maintenance, it would be from 17th August, 2021 and not from 10th March, 2021.

4. He further submits that the Opposite Party is highly qualified. She pursued her study after the marriage between the parties on 7th March, 2013. She is also earning a sum of Rs.50,000/- per month as stated by the Petitioner in his show cause reply to the MAT Case. The said objection was supported by affidavit. However, learned Judge, Family Court did not take the same into consideration while passing the impugned order under Annexure-6. As such, the impugned order under Annexure-6 is not sustainable and is liable to be set

aside. The matter should be remitted back to learned Judge, Family Court to consider the objection raised by the Petitioner afresh giving opportunity of hearing to the parties concerned.

5. Mr. Mohanty, learned counsel for the Opposite Party-Wife vehemently objects to the same and submits that the Petitioner has not filed any disclosure affidavit as required in terms of the ratio decided in the case of ***Rajnish –v- Neha and another***, reported in (2021) 2 SCC 324. On the other hand, the Opposite Party has filed disclosure affidavit in terms of the guidelines in the aforesaid case law and disclosed the income of the Petitioner. It has also been disclosed in the said affidavit that the Opposite Party does not have any independent source of livelihood. Learned Judge, Family Court, taking into consideration the materials available on record, came to a conclusion that the monthly net salary of the Petitioner is Rs.84,516/- and accordingly, passed the impugned order under Annexure-6. Thus, the quantum of maintenance needs no interference.

6. So far as the allegation with regard to the effective date of grant of interim maintenance is concerned, Mr. Mohanty, learned counsel for the Opposite Party submits that the application for interim maintenance was admittedly filed on 10th March, 2021. By order dated 17th August, 2021, the MAT Case was converted from a proceeding under Section 25 of the HM Act to Sections 18 and 20 of the HAMA Act. Thus, the both in the main case as well as in the interim application were existing prior to 17th August, 2021. In view of the above,

learned Judge, Family Court has committed no error in passing the impugned order under Annexure-6.

7. Heard learned counsel for the parties and perused the materials on record.

8. Admittedly, the Opposite Party had initially filed the application i.e. MAT Case No.1-155 of 2016 before learned Senior Civil Judge, Bargarh under Section 25 of the HM Act. After establishment of the Family Court at Bargarh, the proceeding was transferred and has been registered as MAT Case No.5 of 2016. It is also admitted that in the said proceeding under Section 25 of the HM Act, the Opposite Party filed an application under Section 24 of HM the Act on 10th March, 2021 for *pendente lite* maintenance. On appearance, the Petitioner filed an application objecting the jurisdiction of the Court as well as maintainability of the proceeding. On receiving objection, the Opposite Party filed a memorandum to convert the proceeding from Section 25 of the HM Act to a proceeding under Sections 18 and 20 of the HAMA Act. Perusal of the order sheet filed by the Petitioner under Annexure-5, it appears that learned Judge, Family Court vide order dated 10th August, 2021 passed the following order:

“Accordingly, this memo dt.15.02.2020 filed by the wife-petitioner is allowed permitting her to amend the nomenclature by the quoting correct provision of law.

Now, the present Mat Application will be a Mat Application u/s 18 of HAMA instead of section 25 of HMA.

Earlier office note was made for a Mat Application filed u/s 25 of HMA. As such Mat Application has now been changed to Sec. 18 of HAMA

*So the record be sent to the Sheristadar for fresh office note keeping in mind that the present Mat Application is filed u/s 18 of HAMA.
Put up 17.08.2021 for office note.”*

In that view of the matter, a fresh office note was made and the matter was placed on 17th August, 2021 on which date the Court formally admitted the application and posted the matter to 25th August, 2021 for further cross-examination of P.W. 1.

9. In view of the above, it is crystal clear that the Court in the midst of the proceeding only changed the nomenclature of the proceeding. Further after change of nomenclature, the MAT Case filed earlier continued from the stage it was before, but under a different provision of law. In view of the above, the contention of Mr. Mishra, learned counsel for the Petitioner to the effect that the proceeding under Sections 18 and 20 of the HAMA Act was born on 17th August, 2021 cannot hold good, as the proceedings prior to that date in the MAT Case was never wiped out. The Court continued with the said proceeding by posting the matter to 25th August, 2021 for further cross-examination of P.W.1. Admittedly, the interim application was filed on 10th March, 2021. Thus, it cannot be said that there was no interim application for maintenance prior to the date of admission of the proceeding under the HAMA Act. The interim application was, in fact, existing prior to 17th August, 2021.

10. In view of the discussions made above, this Court is of the considered opinion that learned Judge, Family Court has committed no error in directing the Petitioner to pay

maintenance from 10th March, 2021 i.e. from the date of filing of the application.

11. Nothing much to be discussed with regard to quantum of maintenance. Admittedly, the net income of the Petitioner was Rs.84,516/- per month at the time of consideration of the interim application. Although it is alleged that the Opposite Party-Wife has an income of Rs. 50,000/- per month, but, no material is placed either before learned Family Court or before this Court in support of such bald statement. Thus, adhering to the principle that the Opposite Party-Wife is entitled up to 1/4th of the income of the Petitioner-Husband, learned Judge, Family Court has directed the Petitioner to pay Rs.20,000/- per month to the Opposite Party. In view of the above, I find no infirmity in the impugned order under Annexure-6.

12. Accordingly, this writ petition being devoid of any merit stands dismissed.

13. Since the MAT Case is of the year, 2016, learned Judge, Family Court, Bargarh should make an endeavour for early disposal of the same giving opportunity of hearing to the parties concerned.

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

(K.R. Mohapatra)
Judge

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