

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No. 95 of 2021

Bhikari Charan Ojha

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Appellant

Mr. B. Rao, Advocate

-versus-

Ms. Manorama Ojha and Anr.

Respondents

Mr. S.K. Das, Advocate

CORAM:

JUSTICE S. TALAPATRA

JUSTICE M.S. SAHOO

ORDER

01.08.2022

Order No.

06.

1. This matter is taken up through hybrid mode.
2. Heard Mr. B. Rao, learned counsel appearing for the Appellant and also heard Mr. R.N. Mishra, learned counsel appearing on instruction of Mr. S.K. Das, learned counsel for the Respondents.
3. This is an appeal from the judgment and order dated 25.10.2021 delivered in Civil Proceeding No.104 of 2017. The Appellant is the father of the Respondents, who are admittedly unmarried and dependent on the Appellant. Disputes surfaced regarding their maintenance way back in 1999 when the Respondents filed an application being C.P. No.103 of 1999 under Section 20 of the Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as 'the said Act').

4. By the order dated 21.01.2004, the Appellant was directed to pay a sum of Rs.400/- per month to each of the Respondents. By efflux of time, the value the maintenance get diminished. With the material change of circumstances, the Respondents filed an application under Section 25 of the said Act for enhancement of the maintenance allowance. Enhancement has been granted. By the impugned judgment, the maintenance allowance has been enhanced to Rs.3,500/- for each of the Respondents. There is no dispute that the Appellant has been paying his wife, who is living separately, the maintenance allowance of Rs.4,500/- per month obliging the order of maintenance. The Appellant has not challenged that order of maintenance, as issued in favour of the wife. But, he has preferred to challenge the order enhancing the maintenance allowance, issued in favour of the daughters (the Respondents in this appeal). Section 25 of the said Act provides that *the amount of maintenance, whether fixed by a decree of Court or by agreement, either before or after the commencement of the said Act, may be altered subsequently if there is the material change in the circumstances justifying such alteration.*

5. The Respondents, in order to demonstrate that there has been material change in the circumstances, have referred to the change in the living cost and enhancement of the pension of the Appellant. There is no dispute that when the said application for enhancement of the maintenance allowance under Section 25 of the said Act was filed, the

Appellant was receiving a sum of Rs.26,933/- as pension. The Judge, Family Court, Cuttack having considered this material changes has enhanced the maintenance allowance to the extent as indicated before.

6. Mr. Rao, learned counsel has stated that certain facts have not been properly assessed by the Judge, Family Court, Cuttack while increasing the maintenance allowance. He has referred to the pleadings, as available in the objection filed by the Appellant against the prayer for enhancement of the maintenance allowance and to the evidence. According to Mr. Rao, learned counsel, the Appellant has clearly claimed, in the objection, that the Respondents are getting rental from two shops situated on his land and the rental is to the extent of Rs.10,000/- per month. Mr. Rao, learned counsel has further submitted that the Appellant does not object to the increase of the maintenance allowance as a whole. But his sole ground is that the increase as directed by the Judge, Family Court, Cuttack is disproportionate to the income of the Appellant. Hence, interference by this Court is fully warranted.

7. In order to repel the above contention Mr. R.N. Mishra, learned counsel for the Respondents has submitted that the pension has grown further in the interregnum. However, that increase is not the part of the present controversy. According to Mr. Mishra, there is no evidence to show that the Respondents are receiving the rent from the shopkeepers or that they have any control on those shopkeepers. Even, the Appellant herein could not prove that

aspect that the Respondents are realising the rent from those shopkeepers. Mr. Mishra, learned counsel has submitted that the land where the Appellant and the Respondents are living belongs to the maternal grandmother of the Respondents and she is still alive. Therefore, this resource cannot be attributed to the Appellant or to the Respondents. Thus, it appears to us that the cardinal point based on which this appeal has been filed is whether the enhancement that has been made by the Judge, Family Court, Cuttack is proportionate to the enhancement in the income of the Appellant or the enhancement has been made whimsically. We have been taken to the evidence on that aspect of the matter. True it is that, the Appellant took objection against the prayer made for enhancement in the maintenance allowance by contending that the Respondents are receiving the rental of those two shops. But on scrutiny, it has surfaced that there is no evidential materials to establish that the Respondents were receiving the rental from those two shops.

8. Mr. Rao, learned counsel has reiterated that enhancement is not entirely reasonable. The solitary objection, as resorted to, hinges on the plea that the maintenance allowance, as enhanced, is disproportionate to the income of the Appellant. The allowance should be brought down to a reasonable level. We have extended our anxious consideration to the rival contentions as raised by the counsel for the parties. On the day of filing of the petition for enhancement of the maintenance allowance under Section 25 of the said Act, the

pension of the Appellant was admittedly Rs.26,933/-. It is also not denied that the cost of livelihood from the year 1999 has rocketed high. We have also taken into consideration that the Appellant is not challenging the maintenance allowance of his wife determined at Rs.4,500/- per month. But his challenge is exclusively against the maintenance allowance of his daughters (the Respondents) at Rs.3,500/-. By no means it is the case of the Appellant that the Respondents are having any other resources. The ground of receiving of rentals from two shops, as indicated above, could not be established by the Appellant.

9. Situated thus, when the maintenance allowance of the wife at Rs.4,500/- has not been challenged by the Appellant, we are of the view that, the Appellant has failed to make out any case for interference with the impugned judgment and decree.

10. So far as the arrear maintenance is concerned, we would limit it to 75% by waiving the payment of 25%, subject to the condition that the arrear maintenance shall be paid within a period of five months from today in equal five instalments, in addition to the monthly maintenance, as directed by the Judge, Family Court, Cuttack.

11. It is made absolutely clear that if the payment is not made within five months, as stipulated hereunder, the entire arrear maintenance shall be realized from the Appellant. For

the purpose of realization, the decree, as would be drawn, be treated as the money decree.

12. In the result, this appeal stands dismissed, subject to the above conditional waiver.

13. Draw the decree accordingly.

14. Sent down LCRs thereafter.

(S. Talapatra)
Judge

(M.S. Sahoo)
Judge

