

IN THE HIGH COURT OF ORISSA AT CUTTACK
RPFAM NO. 108 OF 2021

Md. Arman

....

Petitioner

Mr. Soumya Ranjan Das, Advocate

-versus-

Reshma Khatoon

....

Opp. Party

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
04.03.2022

Order No.

3. 1. This matter is taken up through hybrid mode.
2. This RPFAM has been filed assailing the judgment and order dated 24th November, 2021 (Annexure-1) passed by learned Judge, Family Court, Rourkela in C.P.No.7 of 2020, whereby the Petitioner has been directed to pay a sum of Rs.10,000/- per month to the Opposite Party-Wife and her son towards maintenance from the date of application, i.e. from 12th February, 2020, in the first week of every month according to English calendar and also to pay arrear maintenance within three months from the date of the said order in three equal installments.
3. Although notice has been made sufficient on the Opposite Party, but none has entered appearance on her behalf. Considering the same, this Court vide order dated 14th February, 2022 directed the office to verify as to whether any counsel has entered appearance on behalf of Opposite Party and to indicate the name of learned counsel. But, the Registry pointed out that none has entered appearance on behalf of the sole Opposite Party.

4. Mr. Das, learned counsel for the Petitioner submits that the Petitioner was serving at Dubai and was earning Rs.30,000/- to Rs.35,000/- per month in terms of the Indian currency. With that salary, he was managing himself at Dubai and was maintaining his wife and old parents. After outbreak of COVID-19, he returned to India and the Company at Dubai has removed him from service. At present, the Petitioner does not have any income. Referring to the deposition of the Petitioner annexed to the petition as Annexure-3, he submits that these material aspects were not taken into consideration by learned Judge, Family Court, Rourkela while passing the impugned order.

5. On perusal of the impugned order, it appears that learned Judge, Family Court, Rourkela has taken into consideration the fact that the Petitioner was receiving Rs.30,000/- to Rs.35,000/- towards his salary and on that basis, directed the Petitioner to pay a sum of Rs.10,000/- per month towards maintenance to the Opposite Party. But, the positive evidence to the effect that he has already lost his job, has not been taken into consideration along with other materials available on record.

6. The Petitioner being the husband of Opposite Party is under obligation to maintain her. While considering the quantum of maintenance, the dependency of his parents on the Petitioner is also a factor to be considered. It appears that learned Judge, Family Court, Rourkela has not taken into consideration these material aspects while passing the impugned order. Thus, the impugned order is not sustainable. Since sufficient material is not available on record, this Court is not in a position to give a definite opinion on the quantum of maintenance.

7. In that view of the matter, the impugned order under Annexure-1 is set aside and the matter is remitted back to the learned Judge, Family Court, Rourkela to adjudicate the matter afresh taking into consideration the materials available on record. It is, however, directed that the Petitioner shall go on paying a sum of Rs.5,000/- (Rupees five thousand only) to the Opposite Party-Wife per month till disposal of the petition under Section 125 Cr.P.C. in C.P. No. 7 of 2020.

8. With the aforesaid observation and direction, the RPFAM is disposed of.

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

(K.R. Mohapatra)
Judge

bks

