



IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM NO.434 OF 2023

Soumendra Prasad Rath

....

Petitioner

Mr. Prasant Kumar Sahoo, Advocate

-versus-

Sunanda Rani Parikshya and another

....

Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

13.03.2024

Order No.

01.

1. This matter is taken up through hybrid mode.

2. Judgment dated 22nd November, 2023 passed in Criminal Petition No.91 of 2019 is under challenge in this RPFAM, whereby learned Judge, Family Court, Khurda refusing maintenance under Section 125 Cr.P.C. to the Opposite Party No.1, directed the Petitioner-husband to pay a sum of Rs.15,000/- per month to the Opposite Party No.2 (minor daughter) from the date of application, i.e., 16th March, 2019.

3. Mr. Sahoo, learned counsel for the Petitioner submits that the relationship between the parties is not disputed. The Petitioner-husband was earlier working as Site Engineer under Wright Brothers, Bhubaneswar. But, he has lost his job in the meantime. He is only assisting his father who is a Class-1 Contractor. The Petitioner does not have sufficient means to pay a sum of Rs.15,000/- per month as maintenance to the Opposite Party No.2-minor daughter. Learned Judge, Family Court, Khurda, while assessing the maintenance, did not also take into consideration that the age of the Opposite Party No.2 is only seven years and she will

not be requiring such a huge amount for her maintenance including education expenses. Thus, learned Judge, Family Court, Khurda, committed an error in passing the impugned order.

4. He further submits that the Opposite Party No.1-wife is also an earning lady. She has equal responsibility to maintain their daughter. Since the Petitioner could not produce any material with regard to her income, the contention of the Petitioner was disbelieved. It is, therefore, submitted that the impugned judgment requires reconsideration.

5. Taking note of the submission made by learned counsel for the Petitioner and on perusal of the record, it appears that no material has been placed by the Petitioner with regard to his income. Income of the Petitioner being in his special knowledge, the burden is on him to prove the same. Since no material was placed before the Court with regard to the income of the Petitioner, the Court made a guesswork and held that the Petitioner must be earning not less than Rs.60,000/- per month and directed to pay a sum of Rs.15,000/- per month to the Opposite Party No.2-minor daughter as maintenance. On perusal of the impugned judgment, it appears that learned Judge, Family Court, Khurda has taken into consideration the materials on record and arrived at the impugned finding.

6. This RPFAM has been filed under Section 19(4) of the Family Court's Act, 1984, which is akin to the provision under Section 397 Cr.P.C. Only because a different view may be possible by re-appreciation of evidence, the finding arrived at by learned Judge, Family Court, Khurda should not be interfered with. Thus, I find no reason to interfere with the impugned judgment.

7. 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

Rojalin

