

Anil Kumar Singh Vs. First Additional Principal Judge

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Court : Madhya Pradesh

Decided On : Jan-24-2013

Appellant : Anil Kumar Singh

Respondent : First Additional Principal Judge

Judgement :

Writ Petition No :

10171. / 2011 Anil Kumar Singh versus Smt.

Anju Singh (Ekka) and otheRs.24.01.2013.

Shri R.K.Samaiya for the petitioner.

None appears for the respondents even though served and represented by counsel.

Challenging the order-dated 11.12.2010 passed by the FiRs.Additional Family Court, Bhopal in Case No.498/2009, awarding maintenance of `23,000/- to respondent Nos.2, 3 and 4, this writ petition has been filed.

Petitioner and respondent No.2 were married and out the wedlock respondent Nos.3 and 4 are born.

Certain proceedings have been initiated which are pending before the Family Court and in the said proceedings an application under section 125 Cr PC was

filed.

The application was taken up for hearing in a Mega Lok Adalat, which was held on 11.12.2010, and on the basis of the consent given by the petitioner, maintenance of `23,000/- was directed to be granted to respondents 2, 3 and 4.

It is the case of the petitioner that when the consent was taken from him in the Mega Lok Adalat, on 11.12.2010, the same was without understanding the implication and without considering the fact that the monthly income of the petitioner which he receives as take-home pay was only `29,079/- per month and if maintenance of `23,000/- is granted, the entire amount of salary received by the petitioner would go in making payment of maintenance.

Contending that the consent was given by the petitioner on misconception, he filed a proceeding under section 482 Cr PC, but as the matter was settled in the Mega Lok Adalat, 2 Writ Petition No :

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Anju Singh (Ekka) and otheRs.proceeding under section 482 Cr PC was disposed of giving liberty to the petitioner to file this writ petition.

On a perusal of the material and documents available on record, particularly the pay-slip of the petitioner for the period in question - Annexure P/5, it is seen that the total pay of the petitioner is `62,868/- and the total deduction under various heads are `33,789/- and the monthly pay which is paid to him is only `29,079/-.

If that be so, then the settlement for payment of `23,000/- as maintenance is clearly impermissible and apparently from the documents available on record, it is clear that the maintenance assessed in the Mega Lok Adalat is much on the higher side and is not after considering the actual income of the petitioner and the possibility of the petitioner having given consent on circumstances as explained by him, cannot be ruled out.

Inspite of notice, respondents have neither appeared nor filed their reply and taking note of the documents available on record, particularly the pay slip issued

by the Management of National Thermal Power Corporation Limited - the employer of the petitioner, his income seems to have not been taken note of while deciding the question of payment of maintenance.

That being so, it is a case where the question of payment of maintenance to the respondents should be reconsidered after evaluating the monthly earning of the petitioner and if the award in question directing for payment of `23,000/- as maintenance is permitted to stand, it may cause grave injustice to the petitioner.

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Anju Singh (Ekka) and otheRs.In view of the above, this petition is allowed.

Award and settlement arrived at in the Mega Lok Adalat on 11.12.2010, is quashed and the matter is remanded back to the Family Court, Bhopal for deciding the application under section 125 Cr PC afresh in accordance with law.

With the aforesaid, the petition stands allowed and disposed of.

Certified copy as per rules.

(RAJENDRA MENON) JUDGE Aks/-

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