

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 8030 of 2023

Petitioner :- Juvair

Respondent :- Smt. Khusnaj And 3 Others

Counsel for Petitioner :- Gulab Chandra Tiwari, Munna Prasad Yadav

Counsel for Respondent :- Suresh Dhar Dwivedi, Shahjahanpur

Hon'ble Mrs. Jyotsna Sharma, J.

1. Heard Sri Gulab Chandra Tiwari, learned counsel for the petitioner and Sri Atul Kumar Singh, Advocate holding brief for Sri S.D. Dwivedi, learned counsel for all the private respondents.

2. The petitioner has challenged an order of interim maintenance passed on 26.06.2023, whereby he was directed to pay Rs. 1,000/- per month to his wife and Rs. 1,000/- per month each to his sons, as monthly maintenance amount.

3. The contention of the petitioner is that he is not in a sound mental health, therefore, he is not able to earn any money, hence the order directing him to pay interim maintenance is not proper. To substantiate the contention in this respect, my attention has been drawn to copy of NCCT-Brain dated 17.03.2023 and 10.01.2022. It may be noted that no medical prescription or any medical paper diagnosing any mental ailment, has been submitted to this court. The court is unable to agree with the contention of the petitioner that he is suffering from any mental disease/ailment of such a nature that he cannot earn any money on his own. The other point which may be noted is that so far as his inability to earn or lack of any financial resources are concerned the burden lied on him to satisfy the court, in this regard. He cannot just take shelter of any statement made in his objection without having any material to substantiate the same. It may also be noted that the petitioner even did not file any affidavit/counter affidavit in support of his objection moved before the trial court.

4. The petitioner has straightaway come to this court under Article 227 of the Constitution. He submits that no revision can be filed against the order of the family court. The legal position is that section 19(4) of the Family Courts Act, 1984 provides the scope for filing a revision against orders of interim maintenance.

5. The power under Article 227 of the Constitution of India is definitely supervisory in nature, but it should be exercised sparingly and in appropriate cases, only to prevent miscarriage of justice or flagrant violation of law.

6. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected.

7. In my view, the petition lacks merit and is therefore **dismissed**.

Order Date :- 13.12.2023/#Vikram/-