

GAHC010126512023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./234/2023

MAFIZUR RAHMAN
S/O- ABDUL HAMID, VILL- KHONGRA, P.O. KHONGRA, P.S. TARABARI,
DIST.- BARPETA, PIN- 781305

VERSUS

AFRUJA AHMED
D/O- AFSAR ALI, VILL- BARBHITA, P.O. JATRADIA, P.S.- , DIST.- BARPETA,
PIN- 781305

Advocate for the Petitioner : MR. A ROSHID
Advocate for the Respondent : MR S AHMED (R-1)

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 07-03-2024

Heard Mr. A. Rashid, learned counsel for the petitioner and Mr. S. Ahmed, learned counsel for the respondent.

Ex-parte judgment and order dated 11.5.2023, passed by the learned Principal Judge, Family Court, Barpeta in F. C. (Crl.) Case No. 772/2022 is challenged in this petition u/s 397/401 Cr.P.C. It is to be noted here that vide impugned ex parte judgment and order dated 11.5.2023, the learned Principal Judge, Family Court, Barpeta has directed the petitioner to pay maintenance to the respondent @ 20,000/- per month and also @10,000/- to her minor son from the date of

filing the petition i.e., 20.12.2022 and further directed to pay a cost of Rs. 4,500/-.

Mr. Rashid, learned counsel for the petitioner submits that though the petitioner was served notice by the learned Court below, yet he could not appear before the learned Court below as he was serving, at the relevant point of time, in C.R.P.F as Tailor and that the petitioner is willing to contest the matter and as such, the impugned ex-parte judgment and order dated 11.5.2023 may be set aside and the matter may be remanded back to the learned Court below and to afford him an opportunity to contest the petition.

Whereas, Mr. Ahmed, learned counsel for the respondent submits that the petitioner, inspite of receipt of notice has failed to appear before learned Court below and to contest the petition and that no good ground has been assigned for setting aside the impugned judgment and order and that not a single penny is being paid by the petitioner to the respondent and for which the respondent and her minor son has been suffering and as such, Mr. Ahmed contended to dismiss the petition.

Having heard the submission of learned Advocates of both sides, I have gone through the petition and the documents placed on record and also perused the impugned judgment and order dtd 11.5.2023.

Admittedly, the petitioner has received notice from the Court below, but he has chosen not to contest the petition, for which the ex parte judgment and order came to be passed. Now the petitioner is willing to contest the petition before the learned Court below. According to Mr. Rashid, learned counsel for the petitioner, the petitioner is not in service now and he is also not in a position to pay the maintenance at the rate mentioned in the impugned judgment and order.

Having considered the submissions, so advanced at the bar in the light of facts and circumstances on record and for the ends of justice, this Court is of the view that ends of justice will be meted out if the impugned judgment and order dated 11.5.2023 is set aside and the matter is remanded back to the learned Court below by imposing some amount of cost upon the petitioner. And accordingly, having considered the submission of learned Advocates of both sides and also having considered the facts and circumstances on the record, this Court inclined to impose a cost of Rs 25,000/- upon the petitioner.

And accordingly, the impugned judgment and order stands set aside and quashed. The matter is remanded back to the learned Court below with a direction to the parties to appear before the learned Court below on 19.3.2024. It is further provided that on appearance of the parties, the learned Court below shall afford opportunity to the petitioner to file written statement and to adduce evidence in support of his case. Both the parties shall also file their affidavits describing their assets and liabilities as mandated by Hon'ble Supreme Court in the case of **Rajnesh Vs. Neha & Anr.** reported in **(2021) 2 SCC 324.**

Thereafter, the learned Court below shall decide the matter afresh, preferably within a period of 2(two) months from 19.3.2024.

The amount of cost shall be deposited before the learned Court below on 19.3.2024, and thereafter, the same shall be given to the respondent after proper identification.

JUDGE

Comparing Assistant