

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.480 of 2015

IN

Civil Writ Jurisdiction Case No. 7288 of 2012

=====

Smt. Sangeeta Kumari @ Sangita Kumari, wife of Shri Pankaj Kumar, daughter of Sri Rabindra Prasad, resident of Bans Kothi, D.N. Das Lane, Langertoli, Police Station- Kadam Kuan, Town & District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Superintendent of Police, Patna, District- Patna.
2. Pankaj Kumar, son of Sri Dinesh Prasad Barnwal, resident of Mohalla-Madhopur, Police Station- Kotwali, Town & District- Munger residing at Flat No.439C, Shipra Sun-City, Indrapuram, Police Station- Indrapuram, Town & District- Gajizabad and posted as Senior Manager, M/s Fibcom India Ltd., 77A, Sector-18, IFFCO Road, Gurgaon (Haryana), Pin Code No.122015.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Sushanta Kumar Das

For the Opp. Party-State : Mr. Vinay Kirti Singh, GA-3

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 24-06-2015

Heard Mr. Sushanta Kumar Das, learned counsel
appearing for the petitioner and learned counsel for the State.

This application by invoking the provisions of Article 215 of the Constitution of India read with Section 12 of the Contempt of Courts Act has been filed requesting this Court to draw contempt proceeding against the opposite party no.2 for alleged disobedience of the order dated 1.8.2012 passed in CWJC No.7288 of 2012.

The facts of the case stands recorded in the order passed on 29.4.2014 and require no reiteration. Suffice it to say that the



petitioner by filing an application under Article 227 of the Constitution of India bearing CWJC No.7288 of 2012 had questioned the order dated 29.2.2012 passed by the Additional Principal Judge, Family Court, Patna in Matrimonial Case No.708 of 2008, whereby the enhancement sought by the petitioner to the interim maintenance amount granted under section 24 of the Hindu Marriage Act had been rejected. This Court in consideration of the circumstances and after hearing the parties enhanced the interim maintenance amount from Rs.7,000/- to Rs.10,000/- per month which was found payable with effect from February, 2011 and it was further directed that in case of any default the petitioner may take recourse to the remedy as available to her before the court below.

Alleging non-compliance of the order by the opposite party no.2 the petitioner firstly moved in MJC No.5473 of 2013 and which was disposed of in consideration of the fact that no such application for enforcing payment of the enhanced amount has been taken recourse to by the petitioner. The petitioner has again approached this Court by way of the present application by submitting that although such application has been filed but yet the court below has not drawn any proceeding for enforcing its order.



It is taking note of the submission made by Mr. Das, learned counsel appearing for the petitioner that this Court vide orders passed on 29.4.2015 and 20.5.2015 required a report from the trial court and which has since been received in which the court below has stated that although petitions have been filed by the petitioner complaining of non-compliance of the order of this Court but no formal application as mandated under section 18(1) of the Family Courts Act, 1984 for execution of the order has been filed by the petitioner and it is in these circumstances that execution proceeding for enforcement of the order has not been drawn by the court below.

Section 28A of the Hindu Marriage Act empowers the court to enforce its order in the like manner as a decree of the court and section 18 (1) of the Family Courts Act, 1984 provides that a decree or an order passed by the Family Court shall be executed as a decree or order of the civil court. Very rightly the trial court has informed this Court that in absence of a duly constituted application filed by the petitioner under section 18(1) of the Family Courts Act that the execution proceedings have not been drawn against the opposite party no.2 to enforce the order passed for payment of interim amount.

Having heard counsel for the parties and considering

report of the Family Court in the backdrop of the statutory provisions discussed above, this Court is also of the opinion that a contempt proceeding in the circumstances discussed, is not the rightful recourse for the petitioner and the petitioner shall be at liberty to file an appropriate application for execution of the decree as mandated under section 18(1) of Family Courts Act, 1984.

With the observations aforementioned the contempt application is disposed of.

(Jyoti Saran, J)

SKPathak/-

U			
---	--	--	--