

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7898 of 2015

In
MA 680 of 2012

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Manish Kumar Panjiyar

.... Petitioner/s

Versus

Sudha Kumari

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 01-12-2015 Heard learned counsel Mr. Binod Kumar Sinha

appearing on behalf of the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the husband-petitioner against the order dated 04.07.2012 passed by the learned Principal Judge, Family Court, Patna in Matrimonial Case No.74 of 2011 whereby the court below has directed the petitioner to pay Rs.5,000/- per month to the wife-respondent as maintenance for herself and a minor son from the date of filing the application under Section 24 of the Hindu Marriage Act i.e. 06.08.2011 and also directed to pay Rs.7,000/- as litigation cost.

3. It appears that the husband-petitioner filed the aforesaid matrimonial case under Section 12(1)(c) (d) of the Hindu Marriage Act praying for declaration of marriage as nullity.



During the pendency of the said matrimonial case the wife appeared and filed an application under Section 24 of the Hindu Marriage Act praying for maintenance at Rs.24,000/- per month alleging that the husband-petitioner is getting Rs.40,000/- per month as salary and further that the father of the petitioner-husband is Medical Officer at BIT, Lalpur, Ranchi. The petitioner is jobless and has got no source of income. The court below by the impugned order directed the petitioner as aforesaid.

4. The learned counsel submitted that the court below has wrongly assessed the petitioner's total monthly income Rs.15,554/-. According to the learned counsel, the wife is employed and the certificate granted by the School has been annexed with the supplementary affidavit which shows that she is getting Rs.15,000/- per month as salary. On these grounds the learned counsel submitted that the impugned order be set aside.

5. Perused the order. From perusal of the same, it appears that before the court below nothing was produced in support of the case of the petitioner that wife is employed. It further appears that the court below has considered various documents i.e. documentary evidence produced by the wife and on the basis of the said documentary evidence recorded clear finding that the total monthly income of the petitioner comes to

Rs.15,554/- and accordingly directed the petitioner to pay Rs.5,000/- per month to the wife and also the minor son. So far the submission of learned counsel that the petitioner has to maintain his old parents is concerned, it is not the case that the father of the petitioner is not a Medical Officer at BIT, Lalpur, Ranchi.

6. It is settled principles of law that that the power under Article 227 of the Constitution of India may be exercised in cases occasioning grave injustice or failure of justice such as the court or tribunal has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have and such failure occasioning a failure of justice and that the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction. In the present case, admittedly nothing was produced before the court below on the date of hearing of the application filed by the wife under Section 24 of the Hindu Marriage Act. The court below has examined the documentary evidences and on the basis of the documentary evidences recorded the monthly income of the petitioner. It is settled principles of law that while exercising supervisory jurisdiction under Article 227 the High Court must remember that the High Court is not exercising jurisdiction as an appellate court or a revisional court and, therefore, on the basis of the material

available on record cannot record its own finding of fact and substitute the same.

7. In view of the above position, in my opinion, the impugned order cannot be interfered with in exercise of supervisory jurisdiction. However, the petitioner, if so advised, may produce any evidence and pray for either modification or increase or decrease of the maintenance allowed by the court below and the petitioner is at liberty to file fresh application. According to the petitioner, the wife is employed and is getting handsome salary, which is sufficient for her maintenance and her son and if such application is filed with evidence the court below shall consider the same according to law. It is made clear that because of pendency of the said application the impugned order passed by the court below, which is challenged under this writ application, will not be kept in abeyance. The court below shall take steps for strict compliance of the order. The petitioner shall first comply the order then his application shall be considered.

8. With the aforesaid observations, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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