

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.551 of 2012

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1. Kumari Archana @ Rinu, wife of Ajit Ranjan, Daughter of Madan Mohan Mishra.
 2. Rishu Raj, son of Ajit Ranjan, Minor under the guardianship of His Mother Kumar Archana @ Rinu, Both are resident of Babubarhi, P.S. Babubarhi, District-Madhubani.

.... Applicants/Appellants

Versus

Shri Ajit Ranjan, son of Ram Prasad Singh @ Kailash Singh, resident of Village & P.O. Rewasi, P.S. Riga, District- Sitamarhi.

.... Opposite Party/Respondent

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Appearance :

For the Appellant : Mr. Manoj Kumar Jha, Advocate.
Ms. Sugandha Shruti, Advocate.
For the Respondent : Mr. Bimal Kumar, Advocate.
Mr. Birendra Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 13-03-2015

Applicant wife is Appellant No. 1 herein.

By filing this appeal she has challenged order dated 27.02.2012 passed by Principal Judge, Family Court, Madhubani in Maintenance Case No. 79/2007, whereunder court below directed the husband respondent to pay a sum of Rs. 1000/-, 500/- per month as maintenance to the applicant wife, her minor son, Appellant No. 2.

2. Aforesaid order is being challenged on the ground that the court below while considering the



request of the applicant to pay maintenance did not consider the capacity of her husband to pay maintenance taking into account his ancestral property, the court below has been swayed only by the fact that her husband, though B.Sc., being unemployed is in a position to pay maintenance amount of Rs. 1000/- to wife, Rs. 500/- to the minor son.

3. It is submitted on behalf of the appellant wife that respondent has family income from ancestral property to the tune of Rs. 15 lacs per annum, his father, a retired teacher, is also earning monthly pension of Rs. 15,000/-.

4. It is submitted on behalf of the respondent husband that he being unemployed is not earning any amount of his own but his share in the family property is to the tune of 1½ acres of agricultural land besides ancestral house, other properties like orchard etc. but he is not in a position to pay more than Rs. 1,000/-, Rs.5,00/- as maintenance to the wife, minor son.

5. The court below having considered the case of the parties in the light of the evidence led



on their behalf i.e. Applicant Witness Nos. 1 to 5 including the applicant, Respondent Witness Nos. 1,2 and 3 concluded that monthly maintenance of Rs. 1,000/-, Rs. 500/- be paid to the wife, minor son. Once the court below having considered the evidence came to such conclusion that the aforesaid maintenance amount is payable to the wife, minor son, in our opinion, the said amount should have been directed to be paid *pendente lite* as well. Accordingly, we direct that the applicant wife, her minor son shall be entitled to a maintenance of Rs. 1,000/-, Rs.5,00/- per month each from the date of filing of the case. Arrears *pendente lite* be paid to Appellant No. 1 within two months from the date of receipt/production of a copy of this judgment in the court below. The impugned order was passed on 27.02.2012 in the light of the pleadings made on behalf of the parties in these proceedings which was filed in December, 2007. From 2007 till date there has been a constant rise in the consumer price index, in appreciation of such fact, we are of the view that the amount of maintenance payable to the wife is required to be enhanced from Rs. 1,000/- to Rs.

2,000/-, to the son from Rs. 5,00/- to Rs. 1,000/- per month. Payment of maintenance at the enhanced rate will be made from the month of April, 2015. In case respondent is unable to pay the enhanced amount, it shall be open for him to file an application before Principal Judge, Family Court annexing the evidence to prove his inability to pay the enhanced maintenance amount, which shall be considered by the Principal Judge, Family Court after hearing both the parties in accordance with law without being impressed by the fact that we have directed for enhancement of the maintenance amount. Notwithstanding this order, parties are always at liberty to finally settle the matrimonial dispute as per their mutual agreement.

6. The appeal is, accordingly, disposed of.

(V.N. Sinha, J)

(Ahsanuddin Amanullah, J)

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