

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16241 of 2012

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1. Dr. Basant Prasad S/O Shri Gyan Deo Prasad Permanent R/O Village -
Chautham, P.S. - Chautham, District - Khagaria, At Present R/O Mohalla -
Chhoti Khanjarpur, P.S. Barari (Kotwali), District - Bhagalpur

.... Petitioner/s

Versus

1. Smt. Nilima Shankar W/O Dr. Basant Prasad D/O Late Hari Shankar Lal
At Present R/O Mohalla - Bhatta Bazar, P.S. - K. Hat, District - Purnea

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satyendra Pandey-Advocate

For the Respondent/s : Mr. Rajive Ranjan Singh-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

04 10-12-2015

Heard learned counsel for the petitioner as well as
learned counsel for the respondent.

Unfortunately, being faced with curse, the parties are
none other than spouse. Petitioner, husband had filed matrimonial
suit under the banner of divorce at Bhagalpur, ordinary place of
residence where he happens to be a Dental Surgeon. Opposite
party, wife, who is an Advocate, is practising at her Naihar Purnia
far away from Bhagalpur. Though, the suit has been filed in the
year 2011, even after exhausting of such long interval of 04 years,
on account of inaction of respective parties remains at nascent
stage.

At the other end, on account of grant of maintenance
pendente lite as well as cost of litigation in accordance with

Section 24 of the Hindu Marriage Act by the order impugned dated 03.04.2012, husband approached this Court and is evident vide order dated 10.01.2013 while noticing the wife got the operation of the order impugned stayed.

It has been submitted on behalf of petitioner that admittedly, he happens to be Dental Surgeon, but before granting of maintenance pendente lite, the source of income would have been ascertained by the learned lower Court. It has further been submitted that petitioner, he himself had claimed for maintenance at the end of his wife, which did not inspire confidence to the learned lower Court while rejecting his prayer by the order impugned itself. So, the order impugned is fit to be set aside.

At the other end, the learned counsel representing the respondent has submitted that admittedly, respondent happens to be a practitioner at Bar Association, Purnia, a backward District Court having no prospect apart from suffering some sort of gender infirmity. Furthermore, she has to run to Bhagalpur on each and every date to attend the Court which, on account of negligence on the part of the petitioner did not proceed towards its destination in case, would have been taken up, certainly met with an ultimate conclusion up-till-now. So, apart from being a female, rushing to Bhagalpur on each and every date certainly needs financial

support and for that, husband is under obligation.

Gone through the order impugned, petitioner/ husband has claimed that mother of his wife happens to be a Government Teacher, who nourishes the opposite party (his wife) and further, she has her own earning being an advocate. Side by side, there happens to be a claim at the end of the opposite party (wife) that petitioner being a Dental Surgeon having roaring practice as well as his establishment at Bhagalpur town wherefrom there also happens to be ancestral property, cumulatively suggest earning of Rs.1,00,000/- (one lac) monthly. Both the parties at that very stage did not substantiate their plea by cogent, reliable evidence nor the Court took pain to procure prima facie material on that very score to ascertain the financial status of the parties, but whatever is perceived is grant of meager amount of Rs.35,00/- per month to the wife as maintenance pendente lite as well as Rs.5,00/- per date, as litigation cost.

Ordinarily, the husband is under obligation to maintain his wife. The dispute with regard to quantum of maintenance in consonance with the earnings is to be taken up while granting permanent alimony in terms of Section 25 of the Act. For the present, it looks a question of survival requiring for meeting with immediate need which, even today, the majority of

the female folk are verged to dependency upon their husband, who dominate them. Therefore, keeping the chapter open, in case, the parties are adamant to contest than to reconcile in terms of Section 25 of the Hindu Marriage Act. For the present, taking into account the pendency of the instant petition at Bhagalpur and further, rushing from Purnia to Bhagalpur by the wife to attend the suit, did not persuade to interfere with the order impugned. Accordingly, instant petition is rejected.

However, it is made clear that grant of pendente lite maintenance should not be allowed to for harassment by dragging the litigation forever.

Therefore, the learned lower Court is directed to expedite the trial and conclude the same within six months positively at any cost without granting undue adjournment to any of the parties to avoid the grant of maintenance pendente lite or it be a, tool of harassment. Parties are expected to actively cooperate the Court in getting the trial concluded within the aforesaid stipulated period.

(Aditya Kumar Trivedi, J)

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