

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11072 of 2015

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Madhu Ranjan Kumar Jha @ Madhu Ranjan Jha

.... Petitioner/s

Versus

Prabha Jha @ Ghuddi Jha @ Prabha Kumari Jha

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Subodh Chandra Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 26-11-2015

Heard the learned counsel, Mr. Suman Kumar for the petitioner and the learned counsel, Mr. Bhola Kumar for the respondent on I.A. No.8165 of 2015. At the time of hearing of this I.A., the learned counsel for both the parties submitted that the writ application also may be heard on merit in admission matter. Accordingly, I heard both the parties on merit also.

This application under Article 227 of the Constitution of India has been filed by the husband-petitioner against the order dated 30.05.2015 passed by the learned Principal Judge, Family Court, Bhagalpur in Matrimonial Case No.195 of 2012 whereby the court below directed the petitioner to pay litigation cost of Rs.10,000 and Rs.3,000 per month towards maintenance of the wife-opposite party and Rs.2500 per month each to 3 children of the petitioner.

The main grievance of the petitioner is that on



02.05.2015, the date was fixed for 30.05.2015 but in the ordersheet subsequently it was added to the effect for passing order on the maintenance application. On 30.05.2015, the impugned order was passed which was in fact a clearance day, therefore, the petitioner could not pursue the matter. The learned counsel further submitted that the opposite party-wife is agent of Birla Sunlife Insurance Company and is earning from that post and also is a teacher in a Nathnagar Private School and she is getting the salary from the school but the court below has granted the aforesaid maintenance without considering the pleading of the petitioner. The learned counsel further submitted that the petitioner has got personal loan for his treatment. Further, the petitioner has taken loan for purchasing car and also for construction of house. Therefore, the court below has wrongly granted the aforesaid amount of maintenance in favour of the wife and children. The petitioner is not denying the relationship and is also ready to pay the maintenance but the amount is very high.

On the other hand, the learned counsel appearing on behalf of the respondent submitted that the petitioner is not a teacher nor is earning anything from Birla Sunlife Insurance Company.

Perused the impugned order. It appears that before the



court below in support of the salary of the petitioner documentary evidences were produced. The court below also considered the deductions from the salary of the petitioner and also the fact that nothing was produced before the court below in support of the case that the wife is employed as teacher in any school. Except the statement that the respondent is employed in school and agent in Birla Sunlife Insurance Company, nothing was brought on record. The court below after appreciation of the evidence and considering the monthly income of the petitioner directed the petitioner to pay the interim maintenance as stated above. Admitted fact is that 3 children are dependent on the mother who is unemployed as has been found by the court below. According to the learned counsel for the respondent as has been admitted by the petitioner, 3 children are school going children.

So far the submission of the learned counsel that on 02.05.2015, subsequently it was added that order will be passed on maintenance application is concerned, it may be mentioned here that it is not related to merit of the order. Further, because of the said addition no prejudice is caused to the petitioner because it is not his case that no opportunity of hearing was given to him. From perusal of the impugned order, I find that the court below has clearly recorded that he had already heard the parties. So far the

submission of the learned counsel that 30.05.2015 was a clearance day is concerned, in my opinion, because it was a clearance day, it cannot be said that no order could have been passed. Moreover, whether passing any order on clearance day or any other day it will not affect the merit of the case. So far the merit is concerned, it appears that after considering the evidences, court below has recorded the finding.

Therefore, in exercise of jurisdiction under Article 227 of the Constitution, I am not inclined to interfere with the impugned order. Accordingly, this writ application is dismissed and consequently the I.A. is rejected.

(Mungeshwar Sahoo, J)

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