

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.507 of 2016**

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Chandan Singh

.... Appellant/s

Versus

Smt. Kanchan Singh

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Braj Bhushan Mishra

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 02-09-2016 Heard the learned counsel for the petitioner and the learned
counsel for the respondent.

Perused the impugned order dated 23.12.2015 passed by the
learned Principal Judge, Family Court, Patna in Matrimonial Case
No.434 of 2013 whereby the learned Court below has directed the
petitioners to pay Rs.6,000/- per month (Rs.5000/- for the wife and
Rs.1000/- for the daughter aged about 13 years).

Divorce case has been filed by the husband against the wife
respondent No.1 on the ground of adultery and cruelty. The wife
appeared and filed contesting written statement. Application
under Section 24 of the Hindu Marriage Act was filed by the wife
alleging that the husband petitioner is residing in another house
and is not providing anything for maintenance of the wife and her
minor daughter. According to the wife, the petitioner has several
house wherefrom house which are on rent and the petitioner is



earning several lakhs per month. The present petitioner filed reply to the application alleging that in fact the petitioner is jobless and has got no earning. In fact the wife is earning Rs.10,000/- and is residing in the house of the petitioner. The Court below considering all these aspects of the matter held that the wife has got no residential problem. The relationship and the daughter residing with the mother is not disputed and accordingly, directed the petitioner as aforesaid to pay the maintenance.

From perusal of the impugned order, it appears that the petitioner only denied the allegation of the wife. It is admitted fact that the petitioner is not residing with the wife in the house. He is not disclosing as to where he is residing and what is the income of the petitioner. His defence as has been argued before this Court he is heart patient and may die at any time and he has got no income.

This Court in the case of *Veena Kumari Vs. Srikant* 2004(4) PLJR 533 has held that **‘when the husband is avoiding to declare his income, the contention of the wife about the income of the husband is to be accepted by the Court and in that case the High Court accepted the contention of the wife and accordingly, directed the petitioner husband to pay amount.’** In the present case, the petitioner is avoiding to declare his income and only denied the allegation made by the wife. This

Court in **2003 (4) PLJR 423** has held ‘in exercise of jurisdiction under Article 227 of the Constitution of India, the High Court cannot hold Panchayati to determine the quantum of maintenance under section 24 of the Hindu Marriage Act.’

In view of the above legal position, I find no reason to interfere with the impugned order. Thus, this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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