

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1196 of 2016**

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Amit Kumar

.... Appellant/s

Versus

Ranjana Kumari @ Guriya

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Uday Kumar

For the Respondent/s : Mr.

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

- 3 09-12-2016 **1.** Heard the learned counsel for the petitioner.
- 2.** Perused the impugned order dated 20.07.2016 passed by learned Principal Judge, Family Court, Bhojpur in Matrimonial Case No.220 of 2011 whereby the Court below directed the petitioner to pay the arrears of maintenance under Section 24 of the Hindu Marriage Act and the order dated 10.08.2016 whereby the Court below rejected the application filed by the husband petitioner to recall the order dated 20.07.2016 and the lower Court has stayed the further proceeding in the matrimonial case till some amount of arrears is paid by the husband to the wife regularly.
- 3.** A Division Bench of the Himachal Pradesh High Court in the case of *Jai Singh v. Smt. Khimi Bhiklu and another, AIR 1978 Himachal Pradesh 45* has held that the husband who was ordered to pay interim alimony and expenses pendente lite,



deliberately and contumaciously flouted the order, it is open to the court to pass an order striking out the defence of the husband by invoking inherent powers under S. 151 C.P.C.

4. The Odissa High Court also expressed the same view in the case of ***Ghasiram Das v. Srimati Arundhati Das and another, AIR 1994 Orissa 15***. It has been held that the purpose of Section 28 could not be allowed to defeat by driving the indigent spouse to enforce the order of maintenance pendente lite in an execution proceeding in every case. The court in appropriate circumstance can enforce its order by striking out the pleadings of defaulting party.

5. The Kolkata High Court in ***AIR 1962 Calcutta 88 Smt. Anita Karmokar and another v. Birendra Chandra Karmokar*** has held that “the object of S.24 of the Hindu Marriage Act is to enable an indigent spouse, who has no independent means of income of her own, to conduct her defence without being handicapped in any way by poverty. A husband, on whom an order under S.24 has been made, but who refuses to pay under the order and aspires yet to go on with his suit must not be encouraged. The English principle, followed in matrimonial causes, of staying the suit in such circumstances is the best way of



dealing with such a situation and the said principle should be applied in proceedings under the Hindu Marriage Act, 1955 as a rule of justice, equity and good conscience.”

6. A Division Bench of High Court of Punjab in the case of *Smt. Malkan Rani v. Krishan Kumar*, AIR. 1961 Punjab 42 has held that “if the court directed the husband under S. 24 of the Hindu Marriage Act to pay the wife maintenance pendente lite and the litigation expenses, the court has inherent power to stay the proceedings till the husband paid the amount which he has been ordered to pay under S. 24. The enforcement of the order otherwise then by execution is not prohibited or excluded by S. 28.”

7. This Court also in the case of *Priynaka Kumar Vs. Kaushal Kishor Gautam in Civil Misc. No.915 of 2016* following the aforesaid decisions held that if the further proceeding till the arrears and current monthly maintenance and litigation cost is not paid by the husband and if the further proceeding of the matrimonial case is not stayed, it will occasion failure of justice and it will put the wife in a position as if she had not defended the case. In that case, this Court directed that the matrimonial suit shall remain stayed till the arrears amount of maintenance and



litigation cost is deposited/ paid by the husband to the wife within a reasonable time that may be fixed by the Court and the Court was specifically directed that if within the reasonable period, that may be fixed by the Court, the arrears of maintenance and cost is not deposited the Court below shall dismiss the Divorce case itself because of disobedience of the order of the trial Court.

8. In view of the above facts and circumstances of the case, I do not find any reason to interfere with the impugned order in exercise of supervisory jurisdiction. Accordingly, this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

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