

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.471 of 2015

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1. Trilok Nath Jha Son of Shiv Narayan Jha R/o - Village - Dullipatti Visa
Tola, P.S. - Jainagar, Distt. - Madhbani

.... Petitioner/s

Versus

1. Sarita Kumari @ Sarita Jha W/o - Trilok Nath Jha, D/o - Pavitra Narayan
Jha R/o - Village - Jainagar, P.S. - Jainagar, Distt. - Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bimal Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 01-03-2016 Heard Mr. Bimal Kumar, learned counsel for the

petitioner.

In this application under Article 227 of the Constitutions
of India prayer has been made for issue of
writ/writs/direction/directions in the nature of prohibition for
setting aside the entire proceeding of Matrimonial Case No. 249
of 2006 and for holding and declaring that the judgment and
decree dated 29.03.2007 / 12.04.2007 passed in Matrimonial
Case No. 249 of 2006 by the Principal Judge, Family Court, Patna
is absolute.

The Hon'ble Supreme Court in the case of Shalimi
Shyam Shetty & anr –v- Rajendra Shnkar Patil, (2010) 8 Supreme
Court Cases 329, has held that writs can be issued by the High

Courts only under Article 226 of the Constitution of India and by the Supreme Court only under Article 32 of the Constitution of India. No writ petition can be moved under Article 227 of the Constitution of India nor can a writ be issued under Article 227 of the Constitution. Therefore, a petition filed under Article 227 of the Constitution cannot be called a writ petition.

Since in Patna High Court Rules there was no provision for registering an application under Article 227 of the Constitution of India, all applications filed under Article 227 were registered as civil writ cases. Now, therefore, merely because the application has been registered as civil writ jurisdiction cases, the High Court cannot issue writs under Article 227 of the Constitution of India as the order passed by the court below is of civil court and in view of recent decision of the Supreme Court in the case of Radhey Shyam –v- Chhabi Nath, (2015) 5 Supreme Court Cases 423, the judicial orders of civil courts are not amenable to writ jurisdiction. Further, in the present case for general direction the application under Article 227 of the Constitution is not maintainable. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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