

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12387 of 2014

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Amit Anand

.... Petitioner/s

Versus

Rani Sinha

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 20-01-2016

Heard the learned counsel, Mr. Anil Kumar for the petitioner and the learned counsel, Ms. Sudha Ambashtha for the respondent on I.A. No.7480 of 2015. At the time of hearing of this I.A., both the learned counsels submitted that the writ application itself may be heard on merit in admission matter. Accordingly, I heard them on merit in admission matter.

This application under Article 227 of the Constitution of India has been filed by the husband against the order dated 17.05.2014 passed by the learned Principal Judge, Family Court, Patna in Matrimonial Case No.723 of 2011 directing the petitioner to pay Rs.7,000 per month as maintenance to the wife-respondent.

The learned counsel for the petitioner submitted that the Court below wrongly recorded the finding that the income of the petitioner is Rs.20,000-25,000 per month. In fact, the petitioner is not related with the coaching school(Subham Convent). The



petitioner earns only by tuition. The Principal of Subham Convent has issued a certificate to the effect that the petitioner has no connection with Subham Convent. The learned counsel further submitted that it is wrong to say that the income of the petitioner is Rs.20,000-25,000 per month, therefore, the impugned order is liable to be set aside.

On the other hand, the learned counsel appearing on behalf of the wife-respondent vehemently opposed the prayer and submitted that this Annexure 5 is only a certificate issued by so called Principal of Subham Convent and this document was never produced before the Court below. In the Court below, the contention of the petitioner regarding income has been accepted and the Court below has categorically recorded a finding that the monthly income of the petitioner is not less than Rs.20,000-25,000 per month and, therefore, the Court below has rightly directed the petitioner to pay the amount by terms of order dated 17.05.2014. Since after passing the order, the petitioner never paid any maintenance to the petitioner and now the arrear is about more than Rs. two lacs. When distress warrant has been issued, the petitioner has deposited some amount in the Court below.

Perused the order passed by the Court below. From perusal of the order, it appears that Court below considered all the

submissions which is being raised by the petitioner and also the submissions and grounds raised by the wife-respondent. It is admitted fact that the respondent is the wife. The Court below recorded clear finding that the petitioner's income is not less than Rs.20,000-25,000 per month.

So far exercise of supervisory jurisdiction is concerned, the Supreme Court has held that "jurisdiction under Article 227 is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well-known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well-recognized constraints. It cannot be exercised like a "bull in a china shop", to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice." Reference may be made to the case of **Jai Singh and others v. Municipal Corporation of Delhi and another, (2010) 9 Supreme Court Cases 385.**

In the present case, it cannot be said that the order passed by the Court below is irrational, illegal or it is not within the jurisdiction of the Court and that the order passed by the Court below occasioned any failure of justice.

In view of the clear finding recorded by the Court below, this Court in exercise of supervisory jurisdiction cannot substitute own finding of fact and, therefore, the impugned order cannot be interfered with in supervisory jurisdiction.

Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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