

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.19155 of 2014**

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Anil Kumar Jain

.... .... Petitioner/s

Versus

Rashmi Jain

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Vivek Prasad

For the Respondent/s : Mr.

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

**ORAL ORDER**

2      14-01-2016    **1.**            Heard the learned counsel, Mr. Vivek Prasad, for the petitioner and the learned counsel, Mr. Sri Prakash Srivastava, for the respondent.

**2.**            This application under Article 227 of the Constitution of India has been filed by the husband against the order dated 20.09.2014 passed by learned Addl. Principal Judge, Family Court, Patna in Matrimonial Case No.273 of 2009 whereby the Court below directed the husband petitioner to pay a sum of Rs.20,000/- to the respondent by the next date and further to pay Rs.4,500/- per month after payment of the aforesaid amount, the arrears of maintenance of Rs.1,55,000/- to be paid before conclusion of the matrimonial case in seven instalments.

**3.**            It appears that the husband filed the aforesaid Matrimonial case for divorce of the wife on the ground of adultery



and cruelty. The wife appeared and filed contesting written statement denying the allegation. Thereafter, application under Section 24 of the Hindu Marriage Act was filed by the wife respondent claiming maintenance during the pendency of the divorce suit and also claimed litigation cost. Ultimately, the High Court directed the husband to pay Rs.4500/- per month as maintenance to the wife and her minor son. This order was passed on 08.07.2011 in C.W.J.C. No.3158 of 2011. When the petitioner did not pay this amount, the Court below by the impugned order directed the petitioner to pay the arrears as aforesaid.

**4.** The learned counsel for the petitioner submitted that in fact after the order passed by the High Court directing the husband to pay Rs.4500/- per month as maintenance under Section 24 of the Hindu Marriage Act, there was one time settlement between the husband and wife and in fact, Rs. 7 lakhs was paid on 24.05.2012. The Court below without considering this payment of Rs.7 lakhs in lieu of share of the wife and her minor son in the house, the Court below directed the petitioner to pay the maintenance and arrears of maintenance as aforesaid. In fact the suit for partition was filed by the wife only with a view to extract money from the husband and family members and when the amount was paid, all the rights and interest of the wife and minor

son ceased and, therefore, the Court below should not have directed to pay the arrears of Rs. 1,75,000/-.

**5.** At the time of hearing of this writ application under Article 227, the learned counsel, Mr. srivastava, for the respondent produced ordersheets of the Court below to show that even after the alleged onetime settlement, the petitioner husband was paying the monthly maintenance of Rs.4500/-.

**6.** Perused the ordersheet dated 09.07.2012, 03.08.2012, 07.11.2012, 29.11.2012. From perusal of these ordersheets of the Court below, it appears that after alleged one time settlement, the husband was paying the monthly maintenance to the wife. It may be mentioned here that in the counter affidavit filed by the wife, the agreement by which 7 lakhs was paid to the wife has been annexed as Annexure 'A'. From perusal of the same, it appears that a title suit was filed by the wife being Title Suit No.239 of 2009 in Civil Court, Danapur for partition of the property of the family. From perusal of the agreement, it further appears that an agreement to sell the property was executed by the in-laws of the wife in favour of Sheo Kumar and Manoj Kumar and the plaintiff was paid Rs.7 lakhs by the said two persons and title suit and other criminal cases against Sheo Kumar and Manoj Kumar were got

withdrawn by both of them. Now, therefore, this Rs.7 lakhs was paid by the said two persons in the suit as per share of the wife, therefore, it cannot be said that it has got any nexus with the divorce case. There is no mention about this divorce case or there is nothing to show that in fact that Rs.7 lakhs was paid in connection with maintenance or for permanent alimony. Now, therefore, all the grounds raised by the petitioner that the said payment should be treated as payment for arrears of maintenance and be treated as permanent alimony cannot be accepted and, therefore, admittedly since the High Court has directed the petitioner to pay the arrears of maintenance, the impugned order passed by the Court below pursuant to the direction of High Court needs, no interference under supervisory jurisdiction. Thus, this writ application is dismissed.

7. The Court below is directed to see that the order directing the petitioner to pay the maintenance is strictly complied with according to law.

**(Mungeshwar Sahoo, J)**

Sanjeev/-

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