

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7668 of 2015

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Santosh Kumar Jha

.... Petitioner/s

Versus

Bandana Kumari & Anr

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranvijay Narain Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 01-04-2016

Heard learned counsel, Mr. Rajesh Kumar Singh,

for the petitioner.

The learned Principal Judge, Family Court, Darbhanga by order dated 12.02.2015 directed the petitioner to pay Rs. 6,000/- per month to the respondent no. 1 and Rs. 4,000/- per month to respondent no. 2 who is daughter of the petitioner living with her mother and also granted Rs. 25000/- lumpsum as a litigation cost in Matrimonial Case No. 73 of 2013/HMA No. 253 of 2012.

Admittedly, the petitioner is advocate practicing at Delhi. He filed the divorce case against his wife-respondent. The wife-respondent No. 1 appeared and filed application under Section 24 of the Hindu Marriage Act. The Court below considered the submissions of both the parties and also considered the allegation made by the wife to the effect that the

husband is earning more than Rs. 1 lakh per month from the profession and also considered the fact that the wife is only earning Rs. 9,000/- directed the petitioner to pay the maintenance as aforesaid.

From the perusal of the impugned order, it appears that the petitioner nowhere specifically denied the allegation made by the wife that the petitioner is earning Rs. 1 lakh per month nor the petitioner disclosed his monthly income which was considered by the Court below and thereafter directed the petitioner as aforesaid.

This Court in the case of **Veena Kumari v. Srikant 2004 (4) PLJR 533** held that husband avoiding to declare his income then the contention of the wife about the earning of the husband has to be accepted. The Hon'ble Supreme Court also in the case of **Rita Dutta v. Subhendu Dutta 2005 (4) PLJR SC 67** has held as follows: at Paragraph 17 "we agree with the finding recorded by the High Court as well as the Trial Court that the respondents have not disclosed his true income. He has failed to produce the balance sheet as well as profit and loss to show his income. The income of Rs. 5000/- disclosed by the respondents seems to be grossly inadequate keeping in view that he had standing more than 25 years of profession of architect. Therefore,

the Hon'ble Supreme Court also considering that the husband did not disclose the true income accepted the contention of the wife and enhanced the maintenance awarded by the High Court.

In the present case as stated above, from the perusal of the impugned order, it appears that Court below has not passed the order arbitrarily but has considered all the pros and cons and submissions made by both the parties and thereafter has passed reasoned order.

The Hon'ble Supreme Court in the case of **Jai Singh and others Vs. Municipal Corporation of Delhi and another (2010) 9 Supreme Court Cases 385** has held that the High Court cannot lightly or liberally act as an appellate court and re-appreciate evidence. Generally, it cannot substitute its own conclusion for the conclusion reached by the Courts below or the statutory/quasi-judicial tribunals. The correctional jurisdiction under Article 227 of the Constitution of India 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.

In view of the above proposition of law, this Court cannot substitute or fix any particular maintenance cost in exercise of Supervisory Jurisdiction under Article 227 of the

Constitution of India. Thus in my opinion, no case for interference in exercise of jurisdiction under Article 227 is made out. Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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