

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No 428 of 2016

In

Miscellaneous Jurisdiction Case No 3251 of 2015

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Rajiv Roushan

.... Petitioner.

Versus

Sarika

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Vinod Kumar

For the Respondent/s : Mr.

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL ORDER

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

2 03-02-2016

A suit was filed by Rajiv Roushan before the Principal Judge, Family Court, Patna which was transferred to the Additional Principal Judge, Family Court, Patna seeking divorce from his wife Sarika. This was numbered as Matrimonial Case No 242 of 2004 and was ultimately decreed by the Court allowing divorce, but while doing so, permanent alimony of Rs. 6,000/- per month was awarded in favour of the wife payable by the husband/plaintiff.

Being aggrieved by this part of the judgment, a Miscellaneous Appeal being Miscellaneous Appeal No 528 of



2012 was filed before this Court in terms of Section 19 of the Family Court Act. In this appeal, notices, having been issued to the sole respondent Sarika, when the appeal was taken up as evident from order dated 26.06.2015, the Division Bench found the appellant missing and not appearing and, accordingly, dismissed the appeal. While doing so, the Division Bench traversed in merit also. The appellant, on coming to know of this fact, filed a Civil Review being Civil Review No 128 of 2015 pointing out that in default, the Miscellaneous Appeal could only be dismissed as such and could not have been traversed on merit. It appears that this Civil Review Application was also dismissed by order dated 04.11.2015 while noting that counsel for the review petitioner had been heard. The husband Rajiv Roushan then filed MJC No 3251 of 2015 for recall of this order dated 04.11.2015 passed in Civil Review No 128 of 2015 and mentioned clearly that on the said day, i.e., 04.11.2015, an Advocate, who was not an Advocate-on-record, had sought a short adjournment because of illness of the Advocate-on-record but, in stead of granting adjournment, it was wrongly recorded as the applicant having been heard and the matter dismissed on merit, as such, prayer for recall of the order was made. This MJC again was taken up and by order dated 15.12.2015, this MJC No 3251 of 2015 was again

dismissed for default. Now, we have the fourth application i.e. MJC No 428 of 2016 for recall of order dated 15.12.2015 passed in MJC No 3251 of 2015 stating that the learned counsel for the petitioner could not mark the list on the said day and could not be present.

Shri D K Sinha, learned Senior counsel for the petitioner states that petitioner would suffer irreparable loss and injury if the Miscellaneous Appeal is not heard on merit. The grievance was as to grant of permanent alimony. He submits that there was cogent material on record to show that the estranged wife Sarika is not only gainfully employed but is capable thereof. There was no occasion for grant of permanent alimony and secondly that the children are with the husband/appellant.

In larger interest of justice, we would allow this application restoring MJC No 3251 of 2015, and consequently allow the said application restoring Civil Review No 128 of 2015. We, also allow Civil Review No 128 of 2015, and thereby restore Miscellaneous Appeal No 528 of 2012. This Miscellaneous Appeal having been dismissed after notice to the sole respondent Sarika on 26.06.2015, it would, thus, be necessary that fresh notices are now issued to Sarika, the sole respondent in the Miscellaneous Appeal so that the matter is, once and for all,

settled.

Let notices be issued to the sole respondent both by registered post and in ordinary course on her both addresses i.e. one of Ranchi and one of Nasriganj, District- Rohtas for which requisites etc. must be filed both within one week failing which this application shall stand rejected without further reference to the Bench.

List before an appropriate Bench after notice is validly served.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

Rajiv/MEH/

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