

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1534 of 2016**

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Vijay Kumar Chaurasiya @ Vijay Chaurasiya

.... Appellant/s

Versus

Rina Devi

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Surendra Kishore Thakur

For the Respondent/s : Mr.

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

ORAL ORDER

2 23-12-2016 Heard learned counsel Mr. Surendra Kishore Thakur
for the petitioner.

2. Perused the impugned order dated 11.11.2016 passed by Principal Judge, Family Court, Vaishali at Hajipur in Divorce Case No.308 of 2014 whereby the learned Principal Judge refused to recall the order dated 18.08.2016 directing the petitioner to pay Rs.3,000/- per month as maintenance to his wife under Section 24 of the Hindu Marriage Act and restrained the petitioner from giving evidence till payment of the ad-interim maintenance is made by the petitioner.,

3. The grievance of the petitioner is that he is not in a position to pay Rs.3,000/- per month. The second grievance is that at least the further proceeding should not have been stayed for non-payment of the maintenance as directed by order dated 18.08.2016.



4. A Division Bench of the Himachal Pradesh High Court in the case of **Jai Singh v. Smt. Khimi Bhiklu and another, AIR 1978 Himachal Pradesh 45** has held that the husband who was ordered to pay interim alimony and expenses pendente lite, deliberately and contumaciously flouted the order, it is open to the court to pass an order striking out the defence of the husband by invoking inherent powers under S. 151 C.P.C.

5. The Odissa High Court also expressed the same view in the case of **Ghasiram Das v. Srimati Arundhati Das and another, AIR 1994 Orissa 15**. It has been held that the purpose of Section 28 could not be allowed to defeat by driving the indigent spouse to enforce the order of maintenance pendente lite in an execution proceeding in every case. The court in appropriate circumstance can enforce its order by striking out the pleadings of defaulting party.

6. The Kolkata High Court in **AIR 1962 Calcutta 88 Smt. Anita Karmokar and another v. Birendra Chandra Karmokar** has held that “the object of S.24 of the Hindu Marriage Act is to enable an indigent spouse, who has no independent means or income of her own, to conduct her defence without being handicapped in any way by poverty. A husband, on whom an order under S.24 has been made, but who refuses to pay



under the order and aspires yet to go on with his suit must not be encouraged. The English principle, followed in matrimonial causes, of staying the suit in such circumstances is the best way of dealing with such a situation and the said principle should be applied in proceedings under the Hindu Marriage Act, 1955 as a rule of justice, equity and good conscience.”

7. A Division Bench of High Court of Punjab in the case of Smt. Malkan Rani v. Krishan Kumar, AIR. 1961 Punjab 42 has held that “if the court directed the husband under S. 24 of the Hindu Marriage Act to pay the wife maintenance pendente lite and the litigation expenses, the court has inherent power to stay the proceedings till the husband paid the amount which he has been ordered to pay under S. 24. The enforcement of the order otherwise than by execution is not prohibited or excluded by S. 28.”

8. In view of the above decisions of various High Courts it cannot be said that the order passed by the trial court is illegal in any way or it suffers from jurisdictional error. This Court also in Civil Miscellaneous No.915 of 2016 by order dated 26.09.2016 directed the court below to stay the further proceeding till the realization of arrears and current maintenance and the court below was further directed that if the order of court is not



complied with then the proceeding should be dismissed.

9. Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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