

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.976 of 2016

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Jitendra Das S/o Satya Narayan Das, resident of Village- Kabargawan,
P.O.- Tira Jatmalpur, Police Station- Kalyanpur, District- Samastipur.

.... Petitioner

Versus

Sangeeta Devi @ Sharmila Devi W/o Jitendra Das, resident of Village-
Kabargawan, P.O.- Tira Jatmalpur, Police Station- Kalyanpur, District-
Samastipur, Present Address- Daughter of Anandi Das, resident of Village-
Gangauli, P.O.- Eslam nagar, Police Station- Khanpur, District- Samastipur.

.... Respondent

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Appearance :

For the Appellant/s : Mr. Bijay Bhushan Prasad, Advocate
Ns. Bandana Singh, Advocate

For the Respondent/s : Mr. Suneil Kumar Thakur, Advocate

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

3 24-05-2017

Heard learned Counsel for the parties.

This application has been filed under Article 227 of the Constitution of India against the order dated 4.3.2016, by which the learned court below has issued a direction purporting to be under Section 24 of the Hindu Marriage Act, requiring the husband-petitioner to pay a sum of Rs. 1500/- per month by way of interim maintenance from the date of the order and further to pay a sum of Rs. 400/- for each date as cost of litigation to the wife-opposite party of the proceeding.

Matrimonial Case No. 94 of 2015 has been filed by the husband for restitution of conjugal rights under Section 9 of the Hindu Marriage Act. It transpires from the impugned order that the learned court below has issued the direction for payment of interim maintenance and litigation cost after recording that the attempt for



reconciliation has failed but still such attempt is in progress.

Learned Counsel for the husband-petitioner has submitted that there was no prayer on behalf of the wife by filing an application in that regard as required under Section 24 of the Hindu Marriage Act for payment of interim maintenance and litigation cost after stating the necessary facts in that regard. It has also been contended that there is no finding by the learned court below that the wife has no independent sufficient means to support her nor is there any finding that the income of the husband-petitioner was sufficient for payment of the amount of maintenance and the litigation cost as directed.

Learned Counsel appearing for the wife-respondent, however, has submitted that the procedural laws are handmade of justice and the technical pleas must not stand in the way of granting justice to the parties. Elaborating his submission, he has contended that the family court has wider jurisdiction to act as a dispute before such court relates to family matters and, therefore, strict compliance of procedural law is not required. It has, therefore, been argued that non filing of the petition under Section 24 of the Hindu Marriage Act was not in itself sufficient to vitiate the order for maintenance as passed in the proceeding.

After considering the submission and perusal of the materials on record, it is admitted fact that no application under Section 24 of the Hindu Marriage Act was filed by the wife-respondent in the proceeding. It is also transparent from the impugned order that no finding has been recorded that the wife-



opposite party has no sufficient independent means to support her. Further there is also no finding recorded with regard to the income of the husband-petitioner. The learned court below has straightway issued the direction to the husband-petitioner to pay the amount of maintenance as well as litigation cost to the wife – opposite party. In view of the provisions of Section 24 of the Hindu Marriage Act the impugned order is clearly a non speaking order as the learned court below was enjoined to record finding on relevant facts justifying the grant of the prayer under Section 24 of the Hindu Marriage Act. The impugned order is, therefore, held to be erroneous and deserves to be overturned.

Accordingly, the present application is allowed and the impugned order is quashed.

The wife-respondent, however, is granted liberty to approach the learned court below in accordance with law for grant of interim maintenance and litigation cost. If such a petition is filed the same shall be decided expeditiously by the learned court below in accordance with law and without being prejudiced in any manner by this order.

(V. Nath, J.)

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