

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46913 of 2013

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1. Rahul Raman, Son Of Rabikant Pathak, Resident Of Village - Kalai, P.S.- Sangrampur, District – Munger, At Present Residing At F-2, Ayodhya Enclave, Dipatoli, Ranchi

2. Rabikant Pathak, Son Of Late Shobhakant Pathak

3. Manjula Pathak, Wife Of Rabikant Pathak

Both Resident of Mohalla - Dipatoli, F-2, Ayodhya Enclave, Ranchi

.... Petitioner/s

Versus

1. The State Of Bihar.

2. Alka, Wife Of Rahul Raman, Daughter Of Atul Chandra Chaudhary, Resident Of Village - Shivpuri Colony, Ishakchak, P.S- Ishakchak, District - Bhagalpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar Pandey, Adv.

For the Opposite Party no.1 : Mr. Jagdhar Prasad, APP

For the Opposite Party no.2 : Mr. Ashutosh Jha, Adv.

Mr. Avinav Kumar, Adv.

Mr. Bijoy Kant Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

Date: 23-08-2017

Petitioners have invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. for setting aside the order dated 02.07.2013 passed by the learned Principal Judge, Family Court, Bhagalpur in Misc. Execution Case No.4 of 2013, by which the learned Principal Judge, Family Court, Bhagalpur has been pleased to direct attachment and sale of the properties both movable and immovable as per the details provided by the applicant-O.P. No.2 in her application filed before the court.

2. The petitioners are aggrieved by the impugned order; firstly, for the reason that the impugned order has been passed



without issuing notice to the petitioners on the application filed by the opposite party no.2 and secondly, that the properties which have been ordered to be attached and sold are the self-acquired properties of the petitioner nos.2 and 3 who have got no concern with the Misc. Case No.129 of 2011.

3. Learned counsel submits that it is a matter of record that Misc. Case No.129 of 2011 has been filed under Section 125 Cr.P.C. by the opposite party no.2 claiming maintenance from the petitioner no.1. On the said application vide an ex-parte order dated 08.11.2012 (Annexure-2 to the present application), the learned Principal Judge, Family Court, Bhagalpur has been pleased to fix a sum of Rs.10,000/- as interim maintenance to the applicant/opposite party no.2 for her maintenance per month. Evidently, the said order dated 08.11.2012 is an ex-parte order against the petitioner no.1. It is the case of the petitioners that in the said Misc. Case No.129 of 2011, the petitioner no.1 has appeared and filed a petition on 03.09.2013 seeking leave of the learned Principal Judge, Family Court, Bhagalpur to allow the petitioner no.1 to contest the said case.

4. It is further pointed out from the records that even before appearance of the petitioner no.1 in Misc.Case No.129 of 2011, the opposite party no.2 brought Misc. Execution Case No.4 of 2013 for execution of the order dated 08.11.2012 passed in Misc. Case



No.129 of 2011. It is in the said case the impugned order has been passed.

5. Learned counsel for the petitioners submits that from perusal of the certified copy of the order-sheets enclosed with the present case it would appear that the Misc. Execution Case No.4 of 2013 was filed in the court of learned Principal Judge, Family Court, Bhagalpur on 06.03.2013. The application was thereafter fixed on 12.03.2013 and on the said date it was fixed for admission on 19.03.2013. The order dated 19.03.2013 is missing from the certified copy. It would appear from the order dated 24.04.2013 that on the said date the applicant/opposite party no.2 prayed for issuance of a warrant for realization of Rs.1,60,000/-. On that prayer the learned Principal Judge directed for issuance of distress warrant against the petitioner no.1 who had failed to comply with the order dated 08.11.2012 passed in Misc. Case No.129 of 2011.

6. Learned counsel further points out that on 31.05.2013, which was the next date fixed in the matter, the court directed applicant/opposite party no.2 to submit details of the movable and immovable properties of the opposite party, accordingly on 02.07.2013 the opposite party no.2 filed an application giving details of the movable and immovable properties of the opposite party, requesting the court to attach the properties and passport of the



opposite party for which orders be sent to the District Officer, Ranchi (Jharkhand) and Munger as also to the Police Commissioner, Bangalore (Karnataka). On filing of the said application on 02.07.2013 itself the learned Principal Judge, Family Court, Bhagalpur passed the impugned order directing for attachment of the properties and sale thereof.

7. Learned counsel submits that during pendency of the present application, another Cr.Misc.No.46416 of 2013 was filed by the present petitioner no.1. In the said application, the grievance of the petitioner no.1 was that even after he has filed an application for recall of the ex-parte order dated 08.11.2012 before the learned Principal Judge, Family Court, Bhagalpur, the same is not being considered as the learned Principal Judge is seeking physical appearance of the petitioner no.1. This Court allowed the Cr.Misc.No.46416 of 2013 by which exemption from appearance has been granted to the petitioner no.1.

CONSIDERATION

8. I have heard learned counsel for the parties and perused the records. The grievance of petitioners in the present case is that the impugned order is wholly illegal, arbitrary, bad in law and without jurisdiction. Although, notice was issued to the opposite party no.2 in the present case and she has also appeared through her



Advocate Mr. Ashutosh Jha, but no reply/counter affidavit has been filed on behalf of the opposite party no.2 controverting the statements made in the petition on behalf of the present petitioners. There is no denial of the fact that the order dated 02.07.2013 has been passed without service of notice on the present petitioners nor there is denial of the fact that the movable and immovable properties, which have been ordered to be attached and sold, belong to the petitioner nos.2 and 3 who have no concern with the Misc.Case No.129 of 2011. A copy of the application giving rise to Misc. Execution Case No.4 of 2013 has been placed on record by way of Annexure-4 to the present application, a perusal of the same would show that the petitioner no.1 is the only opposite party in the Execution Case, the other petitioners namely petitioner nos.2 and 3 were not parties to the Execution Case and hence no notice was issued to them. Their contention that for execution of the order dated 08.11.2012 (Annexure-2), their properties cannot be attached and sold and further submissions on behalf of the petitioners that the learned Principal Judge, Family Court, Bhagalpur has passed the impugned order in haste without ensuring compliance of the principles of natural justice and there is no compliance with the provisions contained under Section 128 Cr.P.C. have got force.

9. On behalf of the opposite party no.2 the only plea which has been taken is that she is legally wedded wife and she is



entitled for maintenance which have been fixed by the learned Family Court. The learned counsel representing the opposite party no.2 has highlighted the precarious condition of the opposite party no.2 in absence of payment of maintenance amount. So far the contention of the petitioners that there was no service of notice upon them in the said Misc. Case, the same has not been controverted by bringing any cogent material on the record. In the facts and circumstances stated hereinabove, I would, thus, reach to a conclusion that the impugned order has been passed in haste and without service of notice in the execution proceeding.

10. In the Execution Case, the petitioner no.1 was the only opposite party, the records nowhere shows service of notice upon him. Moreover the contention of the petitioner nos.2 and 3 that the properties attached and ordered to be sold belong to them and they have no concern with the present Execution Case as no order has been passed against them which may be said to be under execution remains uncontroverted, there is no denial by the opposite party no.2. If this is the position that the properties belong to the petitioner nos.2 and 3 and the same has been attached and are ordered to be sold, great prejudice would be caused to the petitioner nos.2 and 3 who are neither arrayed as opposite parties nor otherwise given an opportunity of hearing by learned Principal Judge, Family Court, Bhagalpur. The order of



attachment and sale of properties has been passed on a mere bald statement made in the petition filed by opposite party no.2 on the same date on which impugned order has been passed. Therefore even on this ground the petitioners are able to make out a case for interference with the impugned order.

11. This Court is, therefore, constrained to set aside the order dated 02.7.2013 passed in Misc. Execution Case No.4 of 2013. The impugned order is accordingly set-aside.

12. Setting aside of the impugned order would however not come in the way of the applicant/opposite party no.2 in taking appropriate steps before the Executing Court for enforcement of the order dated 08.11.2012, if not modified till date, or the modified order as the case may be, by filing such application/applications as are permissible in law and the court below shall be fully within its jurisdiction to pass appropriate order after affording proper opportunity of hearing to the parties in accordance with law.

13. The application stands allowed to the extent indicated above.

Arvind/-

(Rajeev Ranjan Prasad, J)

AFR/NAFR	NAFR
CAV DATE	16.08.2017
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