

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.8604 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- SARAN

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Awadhesh Sah S/O Late Pyar Chand Sah Resident Of Village- Mananam, Post
Office- Atigal, Police Station- Atigal, District- Saran At Chapra

.... Petitioner

Versus

1. The State Of Bihar
2. Nirmala Devi W/O Awadhesh Sah Permanent Resident Of Village- Lohri,
Police Station- Chapra Muffasil, District- Saran At Chapra, At Present Residing
At Village- Luvkushpur, Police Station- Chapra Mufassil, District- Saran At
Chapra

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Ram Binod Singh, Advocate

For the State : Mr. Akbar Ali, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 11-08-2017

Heard learned counsel for the petitioner as well as the
learned APP appearing on behalf of the State.

2. Despite valid service of notice, opposite party no.2
has not appeared.

3. The petitioner seeks setting aside of the order dated
22.08.2013, passed by learned Principle Judge, Family Court, Saran at
Chapra in Cr. Misc. Case No.6 of 2012 whereby the prayer of the
petitioner for setting aside ex-parte order was declined.

4. Learned counsel for the petitioner submits that
admittedly the order was passed ex-parte without hearing the
petitioner but fails to point out the ground taken in application dated
08.10.2012 for setting aside the ex-parte order. However, he submits



that by the impugned order no reason is given for not allowing the application rather it is observed that it is not proper to pass any order at this stage and the same will be considered after the final disposal of the present case. It is also submitted that the petitioner is a mason and not regularly employed but agrees to pay Rs.1,000/- per month as interim maintenance to his wife though two daughters also live with her. Learned counsel for the petitioner further submits that maintenance case was filed only on behalf of the wife. Distress warrant has also been issued against the petitioner.

5. Having considered the rival submissions and on perusal of the record especially the impugned order, this Court finds that on application filed by petitioner for setting aside the ex-parte order, the court below observed that the same will be considered after final disposal of the present case. However, the Court below does not give any reason for not setting aside the ex-parte order. The petitioner has not placed grounds showing sufficient cause for not appearing in the court below. Even before this Court also neither copy of the application filed in the court below seeking setting aside ex-parte order has been filed nor any sufficient cause is explained. Hence the petitioner is directed to pay 50% of the interim maintenance amount in view of order dated 04.05.2011. The due amount up till date will be filed before the court below by submitting a bank draft in favour of



opposite party no.2, thereafter the court below will pass afresh order on petition filed for setting aside the ex-parte maintenance order as the impugned order dated 22.08.2013 is not speaking one, so it is set aside with the aforesaid observation.

6. The petition stands disposed of.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
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