

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18852 of 2014

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Madhwendu Shekhar

.... Petitioner/s

Versus

Mrs. Pramila Kumari Sinha

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rana Pratap Singh

For the Respondent/s : Mr. Null

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 20-09-2017 (1) Heard the learned counsel, Mr. Rajesh Singh for the petitioner and the learned senior counsel, Mr. P.N.Shahi assisted by the learned counsel, Mr. Arun Kumar Rai for the sole respondent.

(2) Perused the impugned order dated 15.05.2012 passed by the learned Additional Principal Judge, Family Court, Patna in Matrimonial Case No.2 of 2008 whereby the learned Additional Principal Judge, Family Court directed the husband-petitioner to pay Rs.50,000/- as ad interim maintenance to the sole respondent and also to pay Rs.50,000/- as litigation cost on the application filed by the wife-opposite party under Section 24 of the Hindu Marriage Act.

(3) It appears that a divorce case being Matrimonial Case No.2 of 2008 has been filed by the husband-petitioner against his wife, the respondent herein. During the pendency of



this matrimonial case, the wife filed an application on 02.09.2008 under Section 24 of the Hindu Marriage Act praying therein for a direction to the husband to pay interim maintenance of Rs.25,000/- per month on the ground that the husband is working in reputed company in Germany and getting handsome salary. Thereafter, in criminal case while the husband moved bail application before the High Court in the said bail application, the husband disclosed that he is getting Rs.4,71,705/- Indian currency per month in Germany. Thereafter, the wife-respondent filed a supplementary affidavit dated 05.04.2012 claiming Rs.1,25,000/- as interim maintenance during the pendency of the matrimonial case on the ground that now she came to know the monthly income of the husband as disclosed by him in the bail application. Thereafter, the learned court below after hearing both the parties considering all the arguments advanced by the petitioner before this court regarding deduction and personal experience etc. passed the impugned order directing the petitioner to pay Rs.50,000/- per month as ad interim maintenance allowance to the opposite party so that she may live in the society as per the status of her husband.

(4) The learned counsel appearing for the petitioner submitted that while passing the impugned order, the learned court below did not consider that the petitioner has to pay 45% as tax



and then he has to pay house rent also, therefore, the impugned order is liable to be set aside. The learned counsel further submitted that the wife-respondent in original application claimed only Rs.25,000/- per month but the court below has directed the petitioner to pay Rs.50,000/- per month as ad interim maintenance, therefore, the order passed by the court below is excessive and the court below granted the relief which was not claimed by the wife.

(5) On the other hand, the learned senior counsel, Mr. Shahi appearing on behalf of the wife-respondent submitted that earlier the application under Section 24 of the Hindu Marriage Act was filed by the wife without knowing the income per month. As soon as the wife came to know the monthly income of the husband, she filed supplementary affidavit claiming Rs.1,25,000/- per month as maintenance so that she will be able to live the life as per status of the husband in the society. The learned court below considered each and every matter that is advanced by the learned counsel for the petitioner and then recorded clear finding that even after statutory deduction the husband must be getting Rs.2,53,000/- Indian currency. So far the submission of the learned counsel for the petitioner that 45% tax is required to be paid, the learned senior counsel submitted that only statement was made and no documentary evidence was produced that the



husband ever paid 45% as tax.

(6) From perusal of the impugned order, it appears that the learned court below has passed a reasoned order considering the arguments of both the sides. The learned Additional Principal Judge also taken note of the claim made in the application dated 02.09.2008 and also the supplementary affidavit filed on 04.05.2012. The court below also has taken into account that statutory deduction and then the income of the husband and thereafter has passed the impugned order considering the income of the husband per month.

(7) It may be mentioned here that in 2009, the husband filed Criminal Misc. No.7591 of 2009 wherein he disclosed the gross salary as Rs.4,71,705/-. We are hearing this writ application after eight years i.e. in the year 2017. Now therefore, the salary must have increased.

(8) The Hon'ble Supreme Court in (2010) 9 Supreme Court Cases 385(Jai Singh & Ors. v. Municipal Corporation of Delhi & Anr.) has held that the High Court is expected to exercise such wide power with great care, caution and circumspection. The exercise of jurisdiction must be within the well recognized constraints. It cannot be exercised like a "bull in a china shop" to correct all errors of judgment of court or tribunal acting within the



limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed on grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice.” In the said very decision, the Hon’ble Supreme Court also held that the High Court cannot lightly or liberally act as an appellate court and reappreciate the fact and substitute its own conclusion. Generally it cannot substitute its own conclusion for the conclusion reached by the court below or the statutory/quasi judicial tribunals.

(9) Admittedly, in the present case, it is admitted fact that the husband is getting Rs.4,71,705/- in the year 2009 and the impugned order has been passed in the year 2012 and we are hearing this writ application under Article 227 of the Constitution of India in the year 2017. In such circumstances, in the same facts and the material which are available on record, the High Court cannot substitute its own conclusion for the purpose of supervising the impugned order. In no case, it can be said that the court below has no jurisdiction to pass the impugned order or that the impugned order passed by the court below is not in the manner permitted by law or that the order passed by the court below occasioned failure of justice.

(10) In view of the above settled proposition of law, I



do not find any illegality or impropriety or jurisdictional error in the impugned order, as such, the impugned order needs no interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. Accordingly, this writ application is dismissed.

(11) Considering the fact that the matrimonial case is of the year 2008, the learned Additional Principal Judge, Family Court shall try to dispose of the matrimonial case within a short period without granting unnecessary adjournments to the parties. While proceeding with the matrimonial case, the Court shall see that impugned order is complied with by the petitioner within the period that may be granted by the court below. If the impugned order is not complied with in full strength, the court below shall not proceed with the matrimonial case till the arrears and current interim maintenance is paid or deposited by the petitioner.

(Mungeshwar Sahoo, J)

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