

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.459 of 2017

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1. Sweta Kumari @ Sweta Devi, wife of Anjani Kumar Srivastava, Daughter of Late Shanker Dev Narayan, resident of Mohalla- Maula Bagh Ara (In the west Gali of Vyas Keshav Press), P.S.- Ara Nawada, District- Bhojpur. Presently residing at Mohalla- Ward No.18, Bhabua, Police Station- Bhabua, District- Kaimur at Bhabua.

.... Appellant/s

Versus

1. Anjani Kumar Srivastava, son of Keshav Prasad Srivastava, resident of Mohalla- Maula Bagh, Ara (in the west Gali of Vyas Keshav Press), P.S.- Ara Nawada, District- Bhojpur at Ara.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Kumar Garg

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

2 18-08-2018 Heard learned counsel for the petitioner-wife and learned counsel for the respondent-husband.

The petitioner has filed this civil miscellaneous petition against the order dated 25.01.2017 passed by learned Principal Judge, Family Court, Bhojpur, Ara, by which the petition of the petitioner, filed under Section 24 of the Hindu Marriage Act, for grant of interim maintenance during the pendency of the divorce case, has been rejected.

The learned counsel for the petitioner-wife submits that the husband filed Divorce Case No. 146 of 2014 on the ground of cruelty. The wife appeared in the suit and filed a



petition for grant of interim maintenance and litigation cost.

The learned Principal Judge rejected the petition of the petitioner holding that no order of interim maintenance can be passed at this stage as there is no evidence of income on record and both parties are claiming for grant of maintenance against each other.

The learned counsel for the petitioner further submits that the husband himself stated in Divorce case that he owns a building in Maulabaag, Ara. It is further submitted that there is ample material on record to show that the husband of the petitioner has substantial income. The father of the respondent-husband is a contractor. Mother of the husband is a school teacher and respondent is sole son of his parents. Respondent-husband is a block teacher and he is getting more than Rs. 20,000/- per month as salary. He further submits that learned Principal Judge has committed illegality in dismissing the petition of the petitioner without granting any interim maintenance for the wife and for her minor son.

On the other hand, the learned counsel for the respondent-husband submitted that the husband is a block teacher but on account of cruelty perpetuated on him by his wife, he faced departmental proceeding and did not get any salary. Wife runs a



private school and earns Rs. 50,000/- per month. Husband also filed a petition under Section 24 of the Hindu Marriage Act for grant of Interim maintenance from his wife. The wife subjected him to all sorts of torture and he became mentally ill. The husband is under medical treatment of Dr. Baxi at Ara. He further submits that the learned Principal Judge had rightly rejected the petition of the wife, who is not entitled to get any maintenance and the order does not suffer from any illegality.

Having heard the submissions of both sides and on perusal of order impugned as well as the petition filed under Section 24 of the Hindu Marriage Act and the Divorce Petition filed under Section 13 of the Hindu Marriage Act, it is crystal clear that the husband brought the suit against the petitioner-wife for dissolution of marriage on the ground of cruelty. The husband asserted in the petition that his wife was pressurizing him to transfer the land and the building owned by him, situated in Maulabag, Ara. He further asserted that he is a block teacher but on account of cruelty given by his wife, he became mentally ill but no certificate to this effect was filed. It appears from the order of learned Principal Judge that without taking into consideration the facts, that the husband has stated many facts that he got good income and own a building in Ara town, besides the fact that



husband is a teacher in govt. school, illegally rejected the petition of wife for grant of interim maintenance on the ground that there is no evidence of income of the husband.

Thus, I set aside the order dated 25.01.2017 passed by learned Principal Judge, Family Court, Bhojpur at Ara and remanded the matter back to the Principal Judge, Family Court, Bhojpur, Ara to dispose of the petition of the petitioner-wife afresh within two months from the date of receipt of a copy of this order.

Accordingly, this civil miscellaneous petition is allowed with the aforesaid direction.

(Prabhat Kumar Jha, J)

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