

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1221 of 2017

In
Cr. WJC 288 of 2016

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1. Nitu Kumari @ Guriya W/o Pawan Kumar D/o Shashi Bhushan Prasad,
Resident of Mohalla- Bibiganj, P.S.- Sadar, District- Muzaffarpur.

.... Appellant/s

Versus

1. Pawan Kumar Son of Shivnath Prasad, Resident of Village- Premganj,
P.S. Lalganj, District- Vaishali.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajendra Kumar Jain
Mr. Pradeep Kumar Sinha

For the Respondent/s : M/s. Shivesh Chandra Mishra & Santosh Kumar

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

6 21-06-2018

Heard both sides.

The petitioner has filed this Civil Misc. petition against the order dated 04.07.2016 passed in Maintenance case No. 45 of 2011 by which the learned Principal Judge, Family Court, Muzaffarpur directed the husband/ sole opposite party to pay Rs. 1500/- as interim maintenance, as earlier directed by the Family Court.

The learned counsel for the petitioner submits that petitioner filed Maintenance case No. 45 of 2011 and the Principal Judge, Family Court directed the husband on 21.06.2012 to pay a sum of Rs. 1500/- per month to the wife and her children. Later on vide order dated 04.05.2013 on the application of petitioner the



amount of interim maintenance was enhanced to Rs. 6,000/- per month from Rs. 1500/- per month. The husband/ opposite party filed Cr. Revision No. 880 of 2013 and this court vide order dated 02.08.2014, while issuing notice to the petitioner, directed the husband to pay a sum of Rs. 4,000/- per month instead of Rs. 6,000/- per month to the wife and her children as interim maintenance. Subsequently, Cr. Revision No. 880 of 2013 was dismissed on 18.09.2014 on the ground of non compliance of peremptory order dated 02.08.2014. The same was again restored vide order dated 07.01.2015 passed in Cr. Misc. No. 51164 of 2014. On 21.04.2015, after Cr. Revision No. 880 of 2013 was restored, this court passed interim order directing the husband to pay Rs. 3000/- as interim maintenance to his wife instead of Rs. 6,000/-. Ultimately, vide order dated 25.08.2015, Cr. Revision No. 880 of 2013 was disposed of with a direction to the Family Court to allow the husband and wife to lead evidence within a period of six weeks from the date of receipt of the order and thereafter pass order afresh in accordance with law, since the order of interim maintenance was passed ex parte against the husband.

It is submitted that in pursuance of the aforesaid order the Principal Judge, Family Court without allowing the parties to lead evidence directed the husband to pay Rs. 1500/- as



interim maintenance. This court did not set aside the order dated 04.05.2013 passed in Maintenance case No. 45 of 2011 by which the amount of interim maintenance was enhanced from Rs. 1500/- to Rs. 6,000/- and this court directed the Principal Judge, Family Court to pass order afresh after allowing the parties to lead evidence but the Principal Judge, Family Court has committed illegality and reduced the amount of maintenance from Rs. 6,000/- to Rs. 1500/- although this court vide order dated 02.08.2014 directed the husband to pay Rs. 4000/- as interim maintenance and by the subsequent order dated 21.04.2015 directed the husband to pay Rs. 3,000/- as interim maintenance. Therefore, the order of Principal Judge, Family Court is illegal and against the directions of the High Court.

On the contrary, Mr. Shivesh Chandra Mishra, the learned counsel for the husband/ opposite party submits that vide order dated 21.06.2012 Rs. 1500/- as interim maintenance was directed to be paid to the wife and her two children and since this court disposed of Cr. Revision No. 880 of 2013 on 25.08.2015 with a direction to dispose of petition for interim maintenance by a fresh order, after allowing the parties to lead evidence, the Principal Judge, Family Court passed the impugned order and there is no illegality in the same.



From perusal of the order dated 04.05.2013, 02.08.2014, 21.04. 2015 and 25.08.2015, it appears that the Principal Judge, Family Court vide order dated 04.05.2013 directed the husband to pay Rs. 6,000/- as interim maintenance for his wife and two children. Against that order the husband preferred Cr. Revision No. 880 of 2013 and this court vide order dated 02.08.2014 issued notice to the wife but at the same time directed the husband to make payment of Rs. 4000/- per month instead of Rs. 6,000/- but without noticing this fact this court vide order dated 21.04.2015 directed the husband to pay only Rs. 3000/- per month as interim maintenance and Cr. Revision No. 880 of 2013 was disposed of on 25.08.2015 but the order dated 04.05.2013 against which the husband preferred Cr. Revision No. 880 of 2013 has not been set aside rather Cr. Revision No. 880 of 2013 was disposed of with a direction to Principal Judge, Family Court, Muzaffarpur to allow both sides to lead evidence and thereafter pass order afresh but this court did not even alter the amount of maintenance to be paid to the wife and her children.

Therefore, I find that the Principal Judge, Family Court has illegally passed the order before allowing both sides to lead evidence and reduced the amount of maintenance to Rs. 1500/- from Rs. 6,000/-. Thus, the order dated 04.07.2016



passed in Maintenance Case No. 45 of 2011 is set aside with a direction to learned Principal Judge, Family Court, Muzaffarpur to pass order on the petition of interim maintenance within six weeks from the date of receipt of this order after allowing both sides to lead evidence.

(Prabhat Kumar Jha, J)

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