

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.205 of 2018

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1. Rajiv Kumar S/o Sri Ramashray Prasad R/o Bhabhua, Ward No. 3 (North Patel Chowk), P.S. - Bhabhua, District - Kaimur.

.... Appellant/s

Versus

1. Pinki Kumari W/o Rajiv Kumar, D/o Surendra Prasad Sinha presently resident of Vikas Nagar Colony, Road No. 1, Sandalpur Road, Kumhrar, P.S. - Alamganj, Patna City, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vagisha Pragya Vacaknavi

For the Respondent/s : Mr. Dr. Anshuman Pandey

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

3 20-06-2018 Heard both sides.

The petitioner has filed this civil miscellaneous petition against the part order dated 05.12.2017 passed in Matrimonial Case No.11 of 2016 by which the learned Principal Judge, Family Court, Kaimur at Bhabhua allowed the petition of the wife filed under Section 24 of the Hindu Marriage Act and directed the petitioner to pay a sum of Rs.10,000/- per month as interim maintenance and Rs.1,000/- per month as litigation cost.

The learned counsel for the petitioner submits that the petitioner filed divorce case in which the notice was duly and validly served upon the wife but the wife did not appear and filed MJC No.961 of 2016 in this Court for transfer of Matrimonial



Divorce Case No.11 of 2016 from the Court of Principal Judge, Family Court, Kaimur at Bhabhua to the Court of Principal Judge, Family Court, Patna but the same petition was dismissed on 25.07.2017. Even then the wife-respondent did not appear. The wife appeared only on 22.11.2017 and filed two petitions one for recall of the ex parte hearing of Matrimonial Case No.11 of 2016 and another for grant of interim maintenance under Section 24 of the Hindu Marriage Act. On 05.12.2017, without asking the petitioner to file rejoinder to the petition filed under Section 24 of the Hindu Marriage Act, the Principal Judge, Family Court allowed the petition for ad interim maintenance and directed the petitioner to pay a sum of Rs.10,000/- as interim maintenance besides the order of litigation per month. It is submitted that learned Principal Judge has committed jurisdictional error and material irregularity. The order itself is cryptic as no reason has been assigned for grant of ad interim maintenance.

Mr. Anshuman Pandey, learned counsel appearing on behalf of the respondent, on the other hand, submitted that the copy of the petition for ad interim maintenance was served on the petitioner-husband on 22.11.2017 itself but no rejoinder was filed. The husband was physically present on the date of order while reconciliation was taken up, therefore, the order does not require



any interference.

On perusal of the order dated 05.12.2017, I find that the learned Principal Judge did not give any reason nor allowed the husband to file any rejoinder or considered any facts about the capability of the husband to pay ad interim maintenance to his wife and allowed the petition filed under Section 24 of the Hindu Marriage Act without assigning any reason. Therefore, I find that the learned Principal Judge has committed jurisdictional error as well as material irregularity in allowing the petition filed under Section 24 of the Hindu Marriage Act and thus, the order is not sustainable. Accordingly, that part of the order dated 05.12.2017, by which the petition under Section 24 of the Hindu Marriage Act is allowed, is set aside. Accordingly, this Civil Miscellaneous petition is allowed. The matter is remitted to the Court of Principal Judge, Family Court to pass order afresh in accordance with law after allowing the husband to file rejoinder. If any payment is made by the husband to the wife, the same shall be adjusted.

(Prabhat Kumar Jha, J)

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