

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1009 of 2016**

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Rina Kumari W/o Santosh Kumar, D/o-Arvind Kumar, R/o village-Nerut, &
P.O. Nerut, P.S.- Sare, Dist.-Nalanda,. At present tenant in the house of
Ramchandra Sao, Mohalla Nichali Bazar, Mishra Tola, P.O.& P.S. Rajgir,
Dist.-Nalanda

.... Petitioner

Versus

Santosh Kumar S/o Shree Binod Prasad, P.O.-Pesaur, Rahai, Dist.-Nalanda.
At present C-199, Third Floor, Pandav Nagar, Near Mother Dairy

.... Respondent

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Appearance :

For the Appellant/s : Mr. Kripanand Kumar Prabhakar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

5 02-11-2018

Heard learned counsel for the petitioner.

Nobody appears on behalf of the sole respondent although the name of the learned counsel for the respondent is appearing in the daily cause list.

The petitioner has filed this civil miscellaneous petition to set aside the order dated 10.05.2016 passed by learned Principal Judge, Family Court, Nalanda at Bihar Sharif in Divorce Case No.203/2014, by which, the petition of the petitioner for grant of ad interim maintenance during the pendency of the suit under Section 24 of the Hindu Marriage Act, 1955 has been rejected on the ground that the petitioner is not living with her husband for a long time, and therefore, the petitioner is not entitled to get maintenance.

Learned counsel for the petitioner submits that the husband of the petitioner filed divorce case. The petitioner filed



petition stating therein that she was compelled to live in the house of her parents and she got no source of income. She is dependent on the income of her father. The husband filed rejoinder and stated that the petitioner is running a sewing centre and she used to earn Rs. 4000/- per month but no evidence was given to show that the petitioner has got any source of income. It is submitted that the ground for rejection of the petition for grant of ad interim maintenance is absolutely illegal. The husband of the petitioner earlier filed petition under Section 13-B of Hindu Marriage Act for resolution of marriage with consent and he has agreed to settle the dispute outside the court after paying adequate amount but he refused from his stand and that is why the wife objected the petition for compromise divorce but the learned Principal Judge rejected the petition.

On perusal of the order impugned, I find that learned Principal Judge, Family Court, Nalanda at Bihar Sharif has illegally rejected the petition of the petitioner for grant of ad interim maintenance only considering the conduct of the petitioner that she is not residing with her husband but did not at all consider the fact that the petitioner was compelled to leave the house of her husband.

Accordingly, the order dated 10.05.2016 is set aside and the matter is remitted back to the Principal Judge, Family Court,



Nalanda at Bihar Sharif to pass afresh in accordance with law on the interim maintenance of the petitioner within two months from the date of receipt of this order.

With the aforesaid direction, this civil miscellaneous petition stands disposed of.

(Prabhat Kumar Jha, J)

Amit/-

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