

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.298 of 2018

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1. Vikash Kumar @ Binod Kumar Son of Arvind Kumar @ Arbind Kumar @ Arvind Kumar Gupta, Resident of Village/Mohalla-Chandmari, P.S.-Motihari Town, District-East Champaran.

.... Petitioner/s

Versus

1. Rinki Kumari @ Rinki Gupta, Wife of Vikash Kumar @ Binod Kumar and D/o Ram Naresh Prasad, Resident of Village-Turkauliya Bazar, P.S.-Turkaulia, District-East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binay Kant Mani Tripathi
: Mr. Ajay Kumar Mishra
Miss Ajita

For the Respondent/s : Mr. Sangeet Deokuliar
Mr. Akhilesh Kumar

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

4 11-09-2018 In I.A.No.947 of 2018 in the limitation matter for condonation of delay, Opposite Party No.1 was issued notice and in pursuance of notice, she appeared.

Submission of the learned counsel for the petitioner for condonation of delay is that the petitioner was in custody from 2.11.2017 to 18.1.2018 as such he could not file the revision application in proper time and as soon as he came out of the custody he has filed this Revision Application.

Learned counsel for the Opposite Party No.1 has also not contested the same that he was in custody from 2.11.2017 to 18.1.2018 and the impugned judgment was passed on 1.7.2017,



however, taking lenient view of the matter, the delay is condoned.

So far merit of this Revision Application is concerned, this application has been preferred against the order dated 1.7.2017 passed by the Principal Judge, Family Court, East Champaran, Motihari in Maintenance Case No.M-334 of 2015 wherein by an *ex parte* order, maintenance of Rs.4,000/- per month was allowed to the Opposite Party No.1. The same has been challenged by the learned counsel for the petitioner on the ground that the order is *ex parte* and the petitioner was not given chance to cross examine the witnesses nor he could file the show cause in this case and as such the order has been passed in the back of the petitioner as he was in custody so he could not contest the case, as such the same may be set aside and the matter may be remanded back for consideration.

On the other hand the learned counsel for the Opposite Party No.1 has opposed the prayer of the petitioner on the ground that the impugned order has been passed on 1.7.2017 and he was in custody till 18.1.2018 as such the order has been passed earlier to his going into custody. It is further submitted that the order itself shows that though the petitioner has appeared in the maintenance case and he has also appeared in re-conciliation proceeding but he did not chose to file the show cause nor he has



cross examined the witnesses and as such he has deliberately not participated in the case. It is also submitted that she has no means to maintain herself and she has been deserted by the petitioner and the petitioner has sufficient means to maintain the Opposite Party No.1 as he is a Dealer of *Jan Vitran Pranali Shop* and apart from that he lets out his house on rent and he runs Coaching Centre also as well he is broker of the land also; from that he earns Rs.80,000/- per month, in such view of the matter, there is no illegality in the order and it does not require any interference.

Having heard both sides and from perusal of the impugned order, it appears that the petitioner had not cross examined the witnesses nor he filed the show cause. So far his custody is concerned, the impugned order has been passed on 1.7.2017 whereas the petitioner has been taken into custody on 2.11.2017 and he has remained in custody till 18.1.2018, as such submission of the learned counsel for the petitioner is that he was in custody so he could not contest the case is on its face value false. It further appears from perusal of the record that there is sufficient evidence available on the record to show that Opposite Party No.1 was deserted by her husband and she has no means to maintain herself whereas the evidence has come that the petitioner earns Rs.80,000/- per month and he is a dealer of *Jan Vitran*



Pranali shop and apart from that he runs Coaching Centre and he is also broker of the land and he also lets out his house on rent and even if it is not accepted the petitioner is not having income of Rs.80,000/- the income is sufficient enough to pay the maintenance of Rs.4,000/-, which has been passed by the learned Family Court as the Opposite Party No.1 is entitled to live as the life style and the status of the petitioner.

In such view of the matter, I find no illegality in the impugned order. Hence, this application is dismissed.

(Vinod Kumar Sinha, J)

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