

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.139 of 2019**

Umesh Kumar Choudhary S/o-Achchhe Lal Choudhary R/o- Village-
Dawan,P.S.-Jagdishpur, Bhojpur

... .. Petitioner

Versus

Bindu Devi W/O-Umesh Kumar Choudhary, D/O-Shree Surendra Singh,
P.O.Dhelawan and P.s.- Phulwarisharif, Patna

... .. Respondent

Appearance :

For the Appellant/s : Mr.Sunil Kumar Yadav

For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 18-02-2019

By way of the instant application preferred under Article 227 of the Constitution of India, the petitioner has challenged the order dated 30.05.2018 passed in Maintenance Case No. 131 of 2017 by which the learned Principal Judge, Family Court, Bhojpur at Ara awarded a sum of Rs. 4,000/- per month to the respondent wife and Rs. 3,000/- per month to the minor daughter as maintenance allowance and Rs. 20,000/- as litigation cost to the respondent.

2. Learned counsel for the petitioner submitted that the petitioner is an agriculturist. He never ill-treated his wife, but out of her own sweet will, she left the matrimonial home. In order to harass the petitioner, she has filed the maintenance case under Section 125 of the Code of Criminal Procedure (for short 'Cr.P.C'). The petitioner does not have the capacity to pay the amount awarded as maintenance by the court below. He contended



that the elder daughter lives together with the petitioner and he is bearing costs of her maintenance. In absence of any finding that the petitioner has the capacity to make payment of interim maintenance allowance as awarded against him, the order impugned is not sustainable in law.

3. On perusal of the order impugned, I find that the opposite party had filed Maintenance Case No. 131 of 2017 in the court of Principal Judge, Family Court, Ara under Section 125 of the Cr.P.C. She claimed that she has no income of her own. She was married with the petitioner and out of the wedlock, two daughters were born. The younger daughter lives with her. The petitioner is a homeopathic doctor and earns Rs. 50,000/- per month and, despite having sufficient income, he has abandoned her and the elder daughter.

4. During pendency of the maintenance case, an application was filed by the respondent for awarding interim maintenance allowance. Upon notice, the petitioner failed to file any reply to the application filed by the respondent. Though an effort was made by the court to resolve the dispute, his effort of mediation between the parties failed.

5. From perusal of the record and after hearing the parties, the court below awarded interim maintenance allowance in the manner noted above.



6. The relationship between the petitioner and the respondent is not disputed. The petitioner has not disputed the claim made by the respondent by way of filing any affidavit regarding his monthly income from practice as a homeopathic doctor. He has also not pleaded that the respondent has the financial capability to maintain herself and the daughter living together with her.

7. Under such circumstances, keeping in mind the well settled position in law that the wife is entitled to enjoy the same amenities of life as she would have been had she been staying in the matrimonial home, the daily necessities of life, expenses on education of children etc., I do not find any illegality or perversity in the order of the court below.

8. In that view of the matter, I am not inclined to interfere with the order impugned. The application is dismissed, accordingly.

(Ashwani Kumar Singh, J)

pradeep/sneha

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

