

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.148 of 2019**

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Nathuni Paswan son of Late Shrilal Paswan, Resident of Village and P.O.-
Labhgaon, Distt. Khagaria.

... .. Defendant-Petitioner

Versus

Renu Kumari D/o Late Mahendra Chaudhary, at present residing at Govt.
Quarter, Primary Health Centre, near Sadar Hospital, P.S. -Chitragupt Nagar,
P.O. and District- Khagaria.

... .. Plaintiff-Respondent

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Appearance :

For the Appellant/s : Mr.Rajesh Sinha, Advocate
For the Respondent/s : Mr.

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

Date : 25-02-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner Nathuni Paswan for setting aside the order dated 03.11.2018 passed by the Principal Judge, Family Court, Khagaria in Maintenance Case No. 32 of 2014 whereby he has allowed the petition dated 26.10.2018 filed by the respondent Renu Kumari for examination of four new witnesses.

3. Learned counsel appearing for the petitioner submitted that the impugned order is bad in the eye of law and has been passed without application of judicial mind. He urged that the evidence of the respondent was closed more than one year before. Thereafter, the petitioner had also examined his witnesses. Under such circumstance, the court below ought not



to have allowed the prayer of the respondent by the impugned order which would amount to allowing the respondent to fill up the gap and lacuna.

4. Having heard learned counsel for the petitioner and perused the impugned order dated 29.08.2018, I find that the respondent had filed a maintenance case in the court of Principal Judge, Khagaria against the petitioner claiming maintenance for herself. The petitioner filed his written statement and denied the marriage with the respondent. After filing of the written statement, witnesses were examined on behalf of the respondent and the petitioner. Later on, a petition was filed on 26.10.2018 by the respondent wherein she had stated that she could not examine four witnesses earlier due to poverty, helplessness and other difficulties. Their evidence is necessary for the just decision of the case. The said application of the respondent was contested by the petitioner on the ground that the same has been filed to fill up the gap and lacuna. However, the court below allowed the said application vide impugned order dated 03.11.2018 in the interest of justice and directed the respondent to examine the four witnesses within next four dates.

5. It is true that the court below has allowed the



application for examination of the witnesses after some of the witnesses on behalf of the petitioner were examined. However, the same would not mean that the same has been allowed to fill up lacuna.

6. The case relates to claim of maintenance. The respondent has taken the plea that due to poverty, helplessness and other difficulties she could not examine those witnesses earlier. While allowing the application, the court below has observed that the same is being allowed in the interest of justice.

7. Nothing has been brought to my notice by the petitioner as to what was the lacuna in the evidence of the respondent which she intended to fill up by adducing new witnesses.

8. At this stage, it would be apposite to note that the provision for grant of maintenance has been made to prevent vagaries. The respondent claims that she has no sufficient means to maintain herself and her husband has deserted her. Under such circumstance, in the interest of justice, if the court below has allowed the prayer for examination of certain witnesses, no illegality can be found with the order impugned. The petitioner will have an opportunity to cross-



examine those witnesses.

9. Moreover, it is not the case of the petitioner that the order passed by the court below is without jurisdiction.

10. It is well settled position in law that the scope of power of this Court under Article 227 of the Constitution of India is not in the nature of appellate jurisdiction. The ambit and scope of power with this Court is limited and restrictive in nature. It is exercised where there is want of jurisdiction, error of law or perverse findings of the court below. Such power is to be exercised to keep the subordinate courts within limits of their jurisdiction and authority. It is not to be exercised for correcting the decision of the subordinate court. This Court would not substitute its opinion or interfere with the order of the court below, if there is no infirmity or perversity.

11. Since the order impugned does not suffer from any infirmity or perversity, no interference is warranted by this Court. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

Md. S/SKSuman.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.03.2019
Transmission Date	

