

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.280 of 2019

Manohar Prasad Gupta aged about 62 years, Sex-Male, S/o Late Baidya Nath Gupta Res. of Purani Bazar, Makhan Sah chowk, P.S.- Nagar Distt.- Muzaffarpur.

... .. Petitioner

Versus

Neelam Devi aged about 58 years, sex-Female, w/o Manohar Prasad Gupta, resident of Purani Bazar, Makhan Sah Chowk, P.S.- Nagar Distt. - Muzffarpur. and at present daughter of Late Shyam Prasad Gupta resident of Mohalla- Tilak Maidan, Majlish Sahay Lane, P.S.- Nagar, Distt.- Muzaffarpur.

... .. Respondent

Appearance :

For the Petitioner : Mr.Yugal Kishore, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 26-04-2019

This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 01.09.2018 passed by the learned Principal Judge, Family Court, Muzaffarpur in Misc. Case No.59 of 2016 by which he has restored the maintenance case No.154 of 2010, which was earlier dismissed for want of prosecution on 10.05.2016.

2. Learned counsel appearing on behalf of the petitioner submitted that since the case for maintenance allowance was dismissed for non-prosecution, after approximately two years, the court below ought not to have allowed the application filed by the respondent. He submitted



that no justifiable ground was given by the respondent for restoration of suit and the court below erroneously passed the order impugned.

3. A maintenance case was filed by the respondent alleging that her husband is not taking care of her as well as her daughter and due to that she took shelter in her 'Maika'. She demanded maintenance from her husband (petitioner). An interim maintenance allowance was allowed by the Family Court, with direction to the petitioner to pay Rs.8000/- per month on 06.03.2013. The maintenance case got dismissed on 10.05.2016 for non-prosecution.

4. The respondent filed a petition for restoration of the maintenance case on 01.10.2016.

5. Vide order dated 01.09.2018, the learned Principal Judge, Family Court, Muzaffarpur restored the maintenance case.

6. Being aggrieved by the aforesaid order dated 01.09.2018, the petitioner has filed the instant application.

7. In the matter of restoration of a case, the only consideration should be whether the party seeking restoration had shown sufficient cause for non-appearance. While deciding such application, the approach of the court



should be justice oriented. A liberal approach is required while dealing with an application filed for restoration.

8. The maintenance allowance includes an entitlement to basic needs to deserted and uncared wife, children and parents. The concept originate from Article 15(3) and Article 39(d) of the Constitution of India.

9. Considering the concept of the Act, if the Family Court found cogent reason on the facts and in the circumstances of the case to restore the application dismissed for want of prosecution, no interference is warranted by this Court in supervisory jurisdiction.

10. The application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.04.2019
Transmission Date	NA

