

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.532 of 2019**

1. Jyoti Sinha @ Sunaina D/o Rameshwar Prasad, W/o Samir Kumar Resident of Samir Nagar, P.O. Kashi College Khagaria, P.S. Chitragupta Nagar District Khagaria, present resident of Mohalla Khasganj, P.S. Sohsarai District Nalanda.
2. Omja Verma Minor D/o Samit Kumar as well as Jyoti Sinha @ Sunaina under the Guardian of Jyoti Sinha of Sunaina. Resident of Samir Nagar, P.O. Kashi College Khagaria, P.S. Chitragupta Nagar District Khagaria, present resident of Mohalla Khasganj, P.S. Sohsarai District Nalanda.

... .. Petitioners

Versus

1. Samir Kumar Son of Sri Arbind Kumar Resident of Mohalla Ramdeo Lodge Samir Nagar, P.O. Kashi College Khagaria P.S. Chitrugupta Nagar, District Khagaria.
2. Arbind Kumar Son of late Ramdeo Verma Resident of Mohalla Ramdeo Lodge Samir Nagar, P.O. Kashi College Khagaria P.S. Chitrugupta Nagar, District Khagaria.
3. Manju Verma W/o Arbind Kumar Resident of Mohalla Ramdeo Lodge Samir Nagar, P.O. Kashi College Khagaria P.S. Chitrugupta Nagar, District Khagaria.

... .. Respondents

Appearance :

For the Petitioners	:	Mr.Pankaj Kumar, Advocate
For the Respondents	:	Ms.Sudha Chandra, Advocate

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

Date : 30-08-2019

This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside part of the order dated 20.01.2017 passed in Misc. Case No. 18 of 2016 by the learned Principal Judge, Family Court, Khagaria whereby he



has disposed of the misc. application filed by the petitioner under Order 9 Rule 13 of the Code of Civil Procedure (for short 'CPC') for recall of the ex parte decree dated 20.01.2015 passed in Misc. Case No. 7 of 2014 wherein opposite party herein had prayed to deliver the legitimate custody of Omja Verma (daughter) in his favour.

2. Learned counsel for opposite party no. 1 has raised a preliminary objection regarding the maintainability of the present application. He contended that the order impugned is a final order passed on an application filed under Order 9 Rule 13 of the CPC by the Family Court. The said order is appealable under Section 19 of the Family Courts Act.

3. Learned counsel for the petitioner, however, submitted that without following any enquiry over the application of misc. case, the same has been dropped. No witness was examined and cross-examined. He contended that since the application under Order 9 Rule 13 of the CPC was disposed of without exhausting any proceeding, an application under Article 227 of the Constitution of India would be maintainable.

4. Sub-section (1) of Section 19 of the Family Courts Act provides that save as otherwise provided in sub-section (2) and notwithstanding anything contained in the Code of Civil



Procedure or in the Code of Criminal Procedure, 1973, or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.

5. Sub-section 2 of the aforesaid Act provides that no appeal shall lie from a decree or order passed by the Family Court with the consent of the parties or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973.

6. In the instant case, there is no dispute to the fact that the order impugned is not an interlocutory order. There is also no dispute that the same was not passed by the court below with the consent of the parties.

7. In that view of the matter, the objection raised by the learned counsel appearing for opposite party no. 1 regarding maintainability of the present application is well founded, as sub-section (1) of Section 19 of the CPC provide for the forum of appeal against any order, not being an interlocutory order of a family court.

8. In view of the discussions made above, the application is dismissed as not maintainable.



9. However, if so advised, the petitioner would be at liberty to challenge the order by way of filing an appeal in accordance with law.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.09.2019
Transmission Date	

