

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.886 of 2017

Arising Out of PS. Case No.- Year-1111 Thana- District-

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Md. Irshad @ Bholtu Son of Md. Nisar Ahmad, Resident of village Maula Nagar Bhagwatchak, P.S.- Surajgarha, District- Lakhisarai.

... .. Petitioner/s

Versus

1. Asgari Khatoon, wife of Md. Irshad @ Bholtu, Daughter of Late Siraj.
2. Saliha Praveen, Daughter of Asgari Khatoon.
3. Aliya Praveen, Daughter of Asgari Khatoon, All resident of Village- Maula Nagar Bhagwatchak, P.S. Surajgarha, District- Lakhisarai.
4. State of Bihar through the District Magistrate, Lakhisarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjeev Kumar
For the Respondent/s : Mr. Suresh Prasad Singh

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT

Date : 15-04-2019

This application has been filed for setting aside the order dated 05.05.2016 passed by Principal Judge, Family Court, Lakhisarai in Maintenance Case No.10 of 2015 whereby and whereunder the petitioner was directed to pay Rs.7000/- to opposite party no.1 and also to pay Rs.2000/- each to the opposite party no.2 and 3.

The case of the opposite party no.1 is that she was married with the petitioner and out of their wedlock, she had two daughters but she was ousted from Sasural and she was forced to live in parent's house along with children. She is very poor and have no source of maintenance whereas petitioner is running a



poultry farm and he has also three bighas of agricultural land from which he is earning Rs.30,000/- to Rs35,000/- per month.

It appears that the petitioner has not appeared in the aforesaid maintenance case in spite of issuance of notice by registered post and also on gazette notification and as such the witnesses of the opposite party-applicant was examined and after that the impugned order has been passed granting maintenance to the applicant and his daughter. It further appears that against the aforesaid order, the petitioner has approached and filed a petition under Section 125(2) Cr.P.C. before the Principal Judge, Family Court, Lakhisarai along with limitation petition for setting aside the ex.-parte order, however, petition was also dismissed vide order dated 23.07.2017.

The main ground for assailing the impugned order is that the petitioner was not given any opportunity to participate in the maintenance case and in the back, the order has been passed and though he has filed a petition for setting aside the ex-parte order but that was also dismissed. It has also been submitted that petitioner is still ready to pay some interim maintenance to her if impugned order is set aside and decide the case afresh after allowing the petitioner to adduce evidence and also providing



opportunity to him to cross-examine the witnesses produced by the applicant-opposite parties.

Heard learned counsel for the opposite party no.1 to 3. Submission of the learned counsel for the opposite party No.1 to 3 is that in spite of issuance of notice by registered post, the petitioner did not appear and through gazette notification was also made but he did not appear and as such learned Family Court was forced to proceed ex.-parte and passed the impugned order, hence, this application is devoid of merit.

Having heard both sides and on perusal of the record, it appears that the order has been passed ex.-parte as petitioner did not appear and not participated in the proceeding, however, for the ends of justice, it appears expedient that petitioner should have been given an opportunity to participate in the proceeding and in the meantime, he will pay some interim maintenance to the opposite party no.1 to 3.

Accordingly, this mater is remitted back to the learned Court of Family Judge for deciding it a afresh by giving an opportunity to both the parties to adduce evidence and cross examine the witnesses of each other and dispose of maintenance case within a period of nine months from the receipt of order. However, in the meantime, the petitioner has to pay Rs.3500/- to



opposite party no.1 and Rs.1000/- each to opposite party no.2 and 3 during pendency of this application which will be subject to the final decision in the maintenance case.

Accordingly, the impugned order 05.05.2019 passed in the Maintenance case No.10 of 2015 is set aside. The matter is remitted back to the learned Court below for passing the order by giving opportunity to both the parties.

It is also made it clear that if the petitioner is not paying the interim maintenance amount as directed by this Court, the opposite party no.1 will move before the Family Court for realization of the same through the process of the Court.

(Vinod Kumar Sinha, J)

sanjeev/-

AFR/NAFR	NAFR
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