

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1158 of 2019

Anand Prakash, Son of Sri Surendra Prasad Singh, permanent resident of Village-Khaira, P.S.- Daudnagar, District-Aurangabad at present resident of Bishunpur Pakari South Pioneer Colony, P.O.- Pakari, Via-Anisabad, P.S.- Beur, District- Patna.

... .. Petitioner

Versus

Mansha Kumari, Wife of Sri Anand Prakash and D/o Prof. R.N. Singh (Dr. Ramanand Singh), Resident of C/o- Ramanand Singh, A/103 First Floor Rudra Residency, Gola Road, Danapur, District- Patna, permanent resident of Village-Dulhi, P.O.- Karjee, P.S.- Chand, District- Kaimur.

... .. Respondent

Appearance :

For the Petitioner	:	Mr. Surendra Kumar Singh, Sr. Advocate Mr. Raj Dular Sah, Advocate Mr. Praveen Prakash, Advocate
For the Respondents	:	Ms. Mamta Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 25-10-2019

In view of the order dated 26.09.2019, this case has been listed under the heading 'For Orders' today.

2. A supplementary affidavit on behalf of the petitioner has been filed in which it is stated that in compliance of the order dated 26.09.2019 passed by this Court, the petitioner has deposited the entire arrears of maintenance till October, 2019 amounting to Rs.1,92,000/- in the court of Principal Judge, Family Court, Patna.

3. Mr. Surendra Kumar Singh, learned senior counsel for the petitioner submitted that vide detailed order dated 26.09.2019, this Court has already recorded his submissions. Since the respondent is herself employed and is



drawing Rs.22,000/- per month as her basic salary, she does not need any further financial support from the petitioner for maintaining herself.

4. Ms. Mamta Kumari, learned advocate appearing for the respondent does not dispute the assertions made in the supplementary affidavit filed by the petitioner. She does not dispute the assertion made in the supplementary affidavit that after the order dated 26.09.2019, the petitioner has already deposited the entire arrears of maintenance till October, 2019 in the court of Principal Judge, Family Court, Patna. However, she has contended that at the time when the application for ad interim maintenance under Section 24 of the Hindu Marriage Act was filed, the respondent was unemployed. Hence, there was no misstatement or misrepresentation on her part in filing the application claiming ad interim maintenance and cost of litigation.

5. The facts of the case in brief are that the petitioner was married on 06.05.2007 with the respondent. He filed an application under Section 13 of Hindu Marriage Act, 1955 for decree of divorce vide Matrimonial Case No.905 of 2012 in the court of Principal Judge, Family Court, Patna mainly on the ground of cruelty. The respondent appeared on



notice and contested the matter. She filed an application under Section 24 of the Hindu Marriage Act claiming that the income of the petitioner is 80,000/- per month and in that view of the matter, she is entitled to receive Rs.25,000/- per month as interim maintenance allowance. She took a plea that she has no source of income and is leading a life of destitute.

6. After hearing the parties, the learned Principal Judge vide order dated 28.05.2015 directed the petitioner to pay Rs.6,000/- per month to the respondent towards her maintenance *pendente lite* as well as a lumpsum amount of Rs.15,000/- as litigation cost.

7. Being aggrieved by the order dated 28.05.2015, the petitioner filed a writ petition vide CWJC No.9638 of 2015 praying therein that he is unemployed and is not in a position to pay maintenance *pendente lite* as also the cost of litigation.

8. After hearing the parties, this Court vide order dated 02.03.2016 dismissed the aforesaid writ petition.

9. After dismissal of the aforesaid writ petition, the petitioner complied with the order passed by the learned Principal Judge, Family Court till 15.02.2017. Thereafter, he stopped making payment, as he came to know that the respondent was employed as a primary teacher in May 2015



when the application for *pendente lite* maintenance was allowed by the learned Principal Judge. He filed an application on 03.04.2017 before the court of Principal Judge for recall of the order dated 28.05.2015. The said application was rejected by the court below vide order dated 10.07.2019 on the ground that the order passed by the Family Court on 28.05.2015 has not been set aside by the High Court upon challenge.

10. Being aggrieved by the order dated 10.07.2019 passed by the Family Court, the instant application under Article 227 of the Constitution of India has been filed by the petitioner.

11. On 26.09.2019, while adjourning the case, this Court had directed the petitioner to make payment of the due amount to the respondent and file a supplementary affidavit in this regard.

12. Pursuant to the aforesaid order dated 26.09.2019, a supplementary affidavit has been filed by the petitioner stating therein that the entire arrear of maintenance amounting to Rs.1,92,000/- has been deposited before the court of Principal Judge, Family Court, Patna.

13. On perusal of the record, I find that the respondent has admitted in her deposition before the court of



Principal Judge that she is working in Upgraded Middle School, Parmalpur, which falls in Bhabhua block of Kaimur district. She has further admitted that her appointment is as a regular teacher since the months of May, 2015. She has also admitted that she is getting a salary of Rs. 22,000/- per month.

14. Having noticed the aforestated factual matrix, when I look to the application filed under Section 24 of the Hindu Marriage Act by the respondent in the Family Court, Patna, I find that in paragraph Nos. 9, 11 13 and 15, the following averments have been made:-

“9. That the applicant husband has made the living of the wife/second opposite party miserable to the extent that **she has been suffering in acute financial difficulty without there being any source of income to her**. Her parents are too hand to mouth to maintain her any longer now.

11. That it is submitted and reiterated that opposite party is **helpless and hapless lady, having no source of income** and she is any how being maintained by her father.

13. That the opposite party lady is living on charity of her relatives and father of the opposite party having little means to maintain her married daughter and he is also not in a position to held the present opposite party/wife to defend the abovementioned case.

15. **That at the cost of repetition, once again,**



it is stated that the opposite party/wife having no source of income, she is a house lady and she is unable to come to this Hon'ble Court for contesting the said unless the expenses of this proceeding and interim maintenance pendent lite granted to her."

(emphasis mine)

15. On the said application, after hearing the parties, the order granting maintenance *pendente lite* and cost of litigation was allowed by the learned Principal Judge vide order dated 28.05.2015 wherein the following submissions of the respondent were noticed:-

"It has been submitted on behalf of the opposite party that she is legally wedded wife of the petitioner and their marriage was solemnized on 6th May, 2007 as per Hindu rites and customs. It has further been submitted that the petitioner-husband has dragged her in this matrimonial case for divorce on false and frivolous grounds to give a cover up and shield to his own misdeeds of cruelty and harassment. It has been alleged that the petitioner-husband has himself indulged in gross acts of cruelty towards this opposite party and he has not come with clean hands before this Court against the opposite party-wife and made the life of the opposite party miserable to the extent that **she has been suffering from acute financial difficulty without there being any source of income to**



her. Her parents are also too hand to mouth to maintain her any longer now. The opposite party is a helpless and hopeless lady having no source of income and she is anyhow being maintained by her father.”

(emphasis mine)

16. Thus, it would be evident that in the application filed under Section 24 of the Hindu Marriage Act, 1955, the respondent had categorically pleaded that she has no source of income and is unable to maintain herself.

17. Similarly, while arguing on behalf of the respondent the counsel for the respondent also submitted that the respondent is suffering from acute financial difficulty as she has no source of income is somehow being maintained by her father.

18. However, there is no evidence on record to show that on 03.04.2014 when the application under Section 24 of the Hindu Marriage Act was filed by the respondent, she had any independent source of income. In her deposition in the matrimonial case, she herself admitted that she got employment as a teacher in May, 2015 and is drawing salary of Rs.22,000/- per month.

19. Thus, when the matter was being argued on 28.05.2015 before the Family Court on the application under



Section 24 of the Hindu Marriage Act, there is a possibility that the lawyer conducting the case may not be aware of subsequent appointment of the respondent as a teacher. Hence, it can not be said that any misrepresentation or suppression was made on behalf of the respondent. However, the fact of the matter is that the respondent is a regular teacher drawing salary of Rs.22,000/- per month since May, 2015.

20. Section 24 of the Hindu Marriage Act provides that where in any proceeding under the Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.

21. The relevant consideration for grant of maintenance *pendente lite* is that the spouse seeking maintenance should not have independent income for her/his support. Once, the court reaches its conclusion in that regard, it grants maintenance and the quantum of maintenance is decided.



22. The main object of Section 24 of the Hindu Marriage Act is to grant maintenance to the spouse, be it husband or wife so that he or she with no independent income sufficient for living or meeting litigation expenses may have no handicap.

23. Here, in the present case, the earlier order dated 28.05.2015 passed by the court of Principal Judge was passed on assumption that the respondent has no independent source of income sufficient to maintain herself. However, the admitted fact of the case is that the respondent had got employment in the month of May, 2015 itself, which would mean that on the date the order was passed by the court below, she had already jointed a Government job and was drawing a salary of Rs.22,000/-.

24. Under such circumstance, when the application was filed by the petitioner for recall of the earlier order dated 28.05.2015 in the court of Principal Judge, Family Court, Patna, he ought to have decided the application on merits giving due consideration to the affidavits made on behalf of the parties and evidences recorded in the case.

25. However, the learned Principal Judge rejected the application vide impugned order dated 10.07.2019 merely



on the ground that the order passed by him earlier was upheld by this Court.

26. It would be pertinent to note here that when the writ petition was considered by this Court, this Court also upheld the order dated 28.05.2015 passed by the learned Principal Judge on the assumption that the respondent was unemployed.

27. Subsequently, when the petitioner came to know that the earlier order passed by the learned Principal Judge on 28.05.2015 was on an erroneous pleading of the respondent in the application under Section 24 of the Hindu Marriage Act as also on an erroneous submission made before the court he filed a fresh application on 03.04.2017 for recall of the earlier order. Instead of deciding the application dated 03.04.2017 on merits considering the evidences on record, the court below dismissed the same on an irrelevant consideration ignoring the materials on record.

28. In that view of the matter, the impugned order is not only illegal but perverse too.

29. Accordingly, exercising the supervisory jurisdiction under Articles 227 of the Constitution of India, the impugned order dated 10.07.2019 passed by the learned



Principal Judge, Family Court, Patna in Matrimonial Case No.905 of 2012 is hereby set aside.

30. However, the arrears of maintenance till October, 2019 amounting to Rs.1,92,000/- deposited in the court of Principal Judge, Family Court, Patna, if not released in favour of the respondent so far, is directed to be released in favour of the respondent. Henceforth, the petitioner would be not required to deposit any maintenance *pendente lite* before the court in future.

31. With the aforesaid observations and direction, the application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.11.2019
Transmission Date	NA

