

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.290 of 2019**

Chhotu Sao @ Chhotu Kumar S/o Naresh Sao, Resident of Sirbatpur,
Panchrukha Sampatpur, Police Station- Gopalpur, District-Patna
... .. Petitioner/s

Versus

Pinki Devi W/o Chhotu Kumar @ Chhotu Sao and D/o Gopal Prasad Sah
Resident of Mohalla-Sirbatpur, Panchrukha Sampatpur, Police Station
Gopalpur, District-Patna Respondent/s

Appearance :

For the Appellant/s : Mr. Anil Kumar Dwivedi, Advocate
For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date : 07-03-2019**

The defect, as pointed out by the registry, is
ignored.

2. Heard learned counsel for the petitioner.

3. This application under Article 227 of the
Constitution of India has been filed by the petitioner for setting
aside the order dated 10.08.2017 passed by the learned
Additional Principal Judge, Family Court, Patna in Maintenance
Case No. 1921 (M) of 2014 whereby he has allowed the petition
dated 13.07.2017 filed by the respondent under Section 125 of
the Code of Criminal Procedure for interim maintenance and
has ordered the petitioner to pay Rs. 4000/- per month as interim



maintenance allowance to her and further Rs.5000/- as cost.

4. Learned counsel appearing for the petitioner submitted that the order impugned has been passed even without giving any opportunity of hearing. He contended that the petitioner runs a small grocery shop for earning livelihood and earns about Rs.10000/- to Rs.12000/- per month. The amount awarded is excessive and the petitioner is unable to pay the same.

5. Having heard the learned counsel for the petitioner and perused the impugned order dated 10.08.2017 passed by the learned Additional Principal Judge Family Court, Patna, I find that the respondent had filed her application under Section 125 of the Code of Criminal Procedure on 17.03.2017 in which she had stated that she was married to the petitioner on 27.04.2009 and out of the wedlock a son was born. Subsequently, she was forcibly ousted from her matrimonial home along with her minor son. She has no means to maintain herself and her son as well. The petitioner is a business man and earns about Rs.30,000/- per month. Apart from doing business, he has rental income of about Rs.20,000/- per month. Thus, his total income is about Rs.50,000/- per month. She has further stated that after ousting her from matrimonial home, the



petitioner has married another lady and has refused to pay a single farthing to the opposite party or her minor son for their maintenance. On the basis of the aforesaid contentions, the opposite party had made a prayer that the court should award Rs.20000/- per month for maintenance and Rs.25000/- as cost of litigation.

6. Though notices were served to the petitioner, he did not file his reply. Many a times, he failed to do Pairvy in the case. Whenever attendance was filed on his behalf, on calls no one appeared to contest the case. It is under the aforesaid circumstance, the court had no option but to proceed with the application of the opposite party. In absence of any contest, the court below allowed Rs.4,000/- per month as interim allowance to the respondent. The court below also allowed Rs.5,000/- as one time cost.

7. The plea made by the petitioner that he was not afforded any opportunity of hearing is totally misconceived. Since, he himself chose not to contest the case filed by the opposite party after receiving notice and filing his appearance, he cannot claim that he has not been afforded any opportunity of hearing.

8. That apart, from the pleading made in the



instant application, it is manifest that the petitioner does not dispute the factum of marriage with the respondent. He has also not disputed that out of marriage, he has a son, who is living with the respondent. He has also not pleaded that the opposite party has sufficient means to maintain herself and her minor son. He has admitted that the petitioner runs a grocery shop and earns about Rs.10000/- to Rs.12000/- per month.

9. In view of these admitted facts, I see no error in the order impugned.

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. Keeping in mind the aforesaid discussions,



the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Md. S/SKSuman.

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

