IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.72 of 2018

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Rajnish Ranjan, Son of Ram Charitra Prasad Sharma, resident of Village Sikandra Sheikhpura Road, Police Station Sikandra and District Jamui at present residing at Quarter No. D1/143 Barauni Refinery Township, Police Station Town and District- Begusarai.

... ... Plaintiff-Petitioner

Versus

1. Shrimati Archana Kumari Wife of Rajnish Ranjan, resident of village Sikandra, Sheikhpura Road Police Station Sikandra and District- Jamui at present residing at Quarter No. D1/143 Barauni Refinery Township, Police Station Town and District- Begusarai.
2. Manager (Employee Relation) Indian Oil Corporation Ltd. Barauni.

... ... Respondents

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Appearance :

For the Petitioner :	Mr. Manish Kumar No.2-Advocate
For the Respondent No.1:	Mr. Ajay Kumar Singh-Advocate
	Mr. Vijay Kumar-Advocate
For the Respondent No.2:	Mr. Ankit Katriar-Advocate
For the I.O.C. :	Mr. Shakib Ayaz-Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

25-10-2019 Heard Mr. Manish Kumar, learned counsel appearing for the petitioner, Mr. Ajay Kumar Singh, learned counsel appearing for the respondent no.1 and Mr. Shakib Ayaz, learned counsel appearing for the respondent no.2.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 03.11.2017 passed by the learned Principal Judge, Family Court, Begusarai in Divorce Case No.40 of 2014 whereby he has directed the petitioner to pay the amount of Rs.15,000/- per month as maintenance pendente lite and the

amount of Rs.15,000/- as litigation cost to the respondent no.1.

3. It may be noted that the petitioner has filed Divorce Case No.40 of 2014 seeking decree for divorce under Section 13 of the Hindu Marriage Act on 15th of May, 2014 in the Court of the learned Principal Judge, Family Court, Begusarai.

4. The marriage between the petitioner and the respondent no.1 on 12.06.1998 is not in dispute.

5. During the pendency of the divorce case, the respondent filed an application under Section 24 of the Hindu Marriage Act, 1955 (for short 'the Act') on 22.03.2017 claiming Rs.30,000/- per month as interim maintenance allowance and Rs.96,000/- as cost of litigation.

6. The petitioner contested the matter.

7. After hearing the parties, vide impugned order dated 03.11.2017, the court below passed the order in the manner noticed herein above.

8. Being aggrieved by the order granting an interim maintenance amounting to Rs.15,000/- per month, the petitioner filed the present application before this court.

9. While issuing notice to the respondent, vide an interim order dated 19.03.2018, this court directed the petitioner

to pay the amount of Rs.6,000/- per month instead of as 15,000/- per month to the respondent, as interim maintenance.

10. Mr. Manish Kumar, learned counsel appearing for the petitioner submitted that the learned Principal Judge, Begusarai has erred both in law and on facts in passing the order impugned. He failed to appreciate that the respondent no.1 is living in the official quarter at Barauni Refinery Township allotted to the petitioner by his employer Indian Oil Corporation Limited. According to him, he failed to appreciate that the petitioner has been living with the respondent under one roof, although there is no relationship between them. He has also failed to appreciate that the per month take home salary of the petitioner is Rs.29,380/- only. He has further contended that the petitioner is blessed with a daughter, namely, Neha Kumari, out of the wedlock with the respondent. She was born on 01.09.2003. She is being looked after by the petitioner. In course of the investigation, in the criminal case brought by the respondent, her statement was recorded wherein she has stated a lot about the conduct of her mother. She is a Student of Class-X and substantial amount is being spent over her education.

11. Mr. Manish Kumar has further contended that after the amount being spent on the education of the daughter

Neha Kumari, the petitioner is left with only Rs.14,000/- in order to maintain himself and his daughter. According to Mr. Manish Kumar, learned counsel, the learned Principal Judge was not examined the matter properly and has erred in granting interim maintenance at Rs.15,000/- per month.

12. Per contra, Mr. Ajay Kumar Singh, learned counsel appearing for the respondent no.1 has submitted that the application filed by the petitioner is based on misleading and distorted facts. He contended that the petitioner is working in Indian Oil Corporation bearing his employment no.00066830 and is posted at Barauni Refinery. He has made an absolutely wrong disclosure of his income from salary. His actual annual income from salary is Rs.14,84,378/- per annum.

13. In the counter affidavit filed on behalf of the respondent no.1 pay slips of the petitioner for the month of January, 2017 and February, 2017 mentioning his designation has been as Control Room Operator posted at Barauni Refinery have been annexed.

14. On perusal of the pay slips, it would appear that the total earnings of the petitioner in the month of January, 2017 was Rs.1,02,127.83 and in the month of February, 2017 was Rs.1,68,532.13.

15. The petitioner has not filed any rejoinder disputing the above salary slips annexed as Annexure-A/1 and Annexure-A respectively to the counter-affidavit filed on behalf of the respondent no.1.

16. Initially, only the respondent no.1 was made party in the present application. However, considering the dispute relating to the salary of the petitioner vide order dated 13.09.2019, this Court had directed the petitioner to implead the Indian Oil Corporation through its Manager (Employees Relation), Barauni as respondent no.2 in the case.

17. The respondent no.2 in his affidavit in Para5 stated as under:-

> *"5. That since, in addition to his standard monthly salary, the petitioner gets variable salary payment under various heads (particularly under the salary head of 'overtime'), the same leads to substantial divergence in the net monthly salary outflow of the petitioner. Therefore, the respondent corporation is unable to pick any one payslip of a particular month that would give a true picture of the monthly salary outflow. As such, some of the recent salary slips of the petitioner are being attached herewith for proper assistance to this Hon'ble Court."*

18. On perusal of the pay slips annexed as

Annexure-R2/1 series for the month of June and July, 2019, it would appear that the take home pay of the petitioner in the month of June, 2019 was Rs.94,170/- and in the month of July, 2019 was Rs.49,580/-.

19. The respondent no.2 has also annexed the TDS statement of the petitioner showing particulars of perquisites, other fringe benefits or amenities and profits in lieu of salary with value thereof enumerated in Form No.12BA issued vide Rule 26A (2)(b) of the Income Tax Rules under the signature of the Finance Manager of the Indian Oil Corporation on 31.05.2019 for the financial Year 2018-19.

20. On perusal of the aforestated Form No.12BA, it would appear that income under head of 'salaries' of the petitioner (other than from perquisites) during Financial Year 2018-2019 was Rs.1541465.48. The tax deducted from salary of the petitioner under Section 192(1) of the Income Tax Act was Rs.235760/-. The tax paid by the employer on behalf of the petitioner under Section 192(1A) of the said Act was Rs.16742/-. Thus, during the Financial Year 2018-2019, the total tax paid by the petitioner in the Government Treasury as Income Tax came to Rs.2,52,502. The averments made in the affidavit filed on behalf of the respondent no.2 have also not been

disputed by the petitioner.

21. Having heard the learned counsel for the parties and noticing the aforesaid facts, the only issue which arises for the court's consideration is whether the order dated 03.11.2017 passed by the learned Principal Judge, Begusarai requires any interference by this court in its supervisory jurisdiction.

22. First of all, this court would take notice of **Section 24 of the Act,** which provides that "where in any proceeding under this 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."

23. The interim maintenance is awarded by the court during the continuance of the proceedings of the divorce. The purpose is to meet the necessary and immediate expenses of the spouse, who is a party to the proceedings.

24. The relevant consideration for grant of interim maintenance is that the spouse seeking maintenance should not

have independent income sufficient for her/ his support.

25. Here in the present case, there is no challenge to the fact that the respondent no.1 is the legally wedded wife of the petitioner. There is also no challenge to the fact that she has no independent source of income. The only challenge made by the petitioner is that she is occupying the residential premises allotted to the petitioner by the Indian Oil Corporation and is staying therein.

26. It has been specifically pleaded by the respondent no.1 that she is not being maintained by her husband. The said pleading has not been disputed before the Court below. Under the circumstance, if the learned Principal Judge reached to the conclusion that the respondent no.1 had no independent sufficient income to support herself, no illegality can be found with such finding.

27. Once the Court had reached to such conclusion, it had to grant maintenance and the only discretion left to be exercised by the court at that stage was with regard to the quantum of maintenance.

28. On appreciation of the facts notice herein above, I am of the considered opinion that no illegality was committed by the court in fixing the quantum of maintenance or

the cost of litigation to be paid by the petitioner to the respondent no.1. Hence, the order impugned does not require any interference by this court.

29. The application lacks merit. It is dismissed, accordingly.

30. The petitioner shall be required to pay the entire arrear of interim maintenance allowance to the respondent no.1, which may have arisen due to the interim order dated 19.03.2018 passed by this Court within three months from today, failing which the Court below shall be at liberty to take all possible steps in accordance with law and ensure that the due amount is paid to the respondent no.1.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	04.11.2019
Transmission Date	N.A.