

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.864 of 2018**

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Pramod Kumar son of Omkar Lal, Resident of Village- Kawakole, P.S.-
Kawakol, Distt.- Nawada. Petitioner

Versus

Sandhya Kumari Burnwal alias Sandhaya Deep W/o Pramod Kumar, D/o
Bindeshwar Prasad, resident of Mohalla- Nadraganj Pulpar, Machchharhata,
P.S.- Civil Lines, Distt- Gaya. Respondent

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Appearance :

For the Appellant/s : Mr. Dr. Anjani Prasad Singh, Advocate
For the Respondent/s : Mr.

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

Date : 04-07-2019

Heard learned counsel for the petitioner.

2. This application has been filed under Article 227 of the Constitution of India by the petitioner challenging the order dated 19.03.2018 passed in Matrimonial Case No.271 of 2014 by which the learned Principal Judge, Family Court, Nawada, has directed the petitioner to pay Rs.15,000/- as litigation cost and Rs.5,000/- per month as interim maintenance to the respondent since the date of institution of the application during pendency of the suit.

3. Learned counsel appearing for the petitioner has submitted that though the petitioner is ready to keep his wife with full dignity and honour, she is not willing to live with the petitioner in her matrimonial home. Since the wife is reluctant to discharge her marital obligation, the petitioner is not liable to pay maintenance to his wife, who is well educated lady and is



earning more than rupees ten thousand per month by imparting education.

4. He has further contended that the petitioner has no source of income. It is wrong to allege that he is earning rupees one lac from his business.

5. From the materials on record, I find that there is no dispute to the fact that the petitioner was married to the respondent as per Hindu rites and customs on 29.04.2013. A daughter was born out of the said wedlock on 03.08.2014, who is living together with the respondent. The respondent has alleged that after marriage when she went to her *sasural*, she was subjected to cruelty for non-fulfillment of dowry. After *Panchayti*, her family members had to pay rupees two lacs whereafter her *Bidai* was performed. After the daughter was born, the petitioner and his family members again started demanding rupees two lacs. When her parents refused to fulfill the demand, on 15.04.2015, the petitioner brought his wife and daughter at Manpur Bus Stand and abandoned them. Since then she is living with her parents, who are aged about eighty years. She has also filed a case under Section 498-A of the Indian Penal Code against the petitioner and his family members.

6. In her application preferred under Section 24



of the Hindu Marriage Act, 1955, the respondent has stated that she has no independent income. Her husband has a jewellery shop and his income from that shop is rupees one lac per month. Apart from that, he owns a house and is receiving rental income.

7. While contesting the case of maintenance brought by the respondent, in the court below, the petitioner has taken a plea that he has no income from business and is an unemployed youth. He has also taken a plea that the respondent is a well educated lady. She is working as a computer teacher and is earning Rs.10,000/- per month. He has also taken a plea before the court below that the respondent is not willing to live together with the petitioner in her matrimonial home. She always used to talk to someone on mobile phone during her stay in *sasural*, which was being objected by the petitioner.

8. However, after considering the entire facts and circumstance of the case, since the petitioner had failed to give any evidence with regard to income of the respondent and had also not denied the marriage as also birth of a daughter out of the wedlock and her stay with the respondent, the court below vide order dated 19.03.2018 passed in Matrimonial Case No.271 of 2014 allowed ad interim maintenance of Rs.5,000/- to the respondent apart from Rs.15,000/- as litigation cost.



9. The plea taken by the petitioner that the respondent is not willing to live in her matrimonial home and, thus, she is not entitled to claim any maintenance is meritless. There is no denial to the fact that a case under Section 498A of the Indian Penal Code has been filed by the respondent against the petitioner. In case the wife is being subjected to cruelty in her matrimonial home by the petitioner, the petitioner cannot compel her to live together with him in order to suffer further harassment.

10. An interim maintenance under Section 24 of the Hindu Marriage Act is awarded by the court to mitigate the hardships of an unemployed spouse. The wife being neglected by her husband having no source of income is entitled to obtain some subsistence for herself. An estranged woman can also claim maintenance from her husband even if she earns monthly income, which is not enough to maintain herself.

11. In **Sunita Kachwaha and Ors. vs. Anil Kachwaha** since reported in **(2014)16 SCC 715**, the Supreme Court held that even if the wife was earning some amount that may not be a reason to reject her application for maintenance outright. The observations made by the Supreme Court in the said case in para-8 are as under:-



"The learned counsel for the respondent submitted that the appellant wife is well-qualified, having postgraduate degree in Geography and working as a teacher in Jabalpur and also working in the Health Department. Therefore, she has income of her own and needs no financial support from the respondent. In our considered view, merely because the appellant wife is a qualified postgraduate, it would not be sufficient to hold that she is in a position to maintain herself. Insofar as her employment as a teacher in Jabalpur, nothing was placed on record before the Family Court or in the High Court to prove her employment and her earnings. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance."

12. In absence of any proof of income of the respondent, in case the court below has found it appropriate to award Rs.5,000/- per month as ad interim maintenance to the wife, who is also carrying the responsibility of upbringing her daughter, the same cannot be held to be either illegal or without jurisdiction.

13. In absence of any illegality or perversity in



the order impugned, in exercise of power of superintendence under Article 227 of the Constitution of India, I am not inclined to interfere with the same.

14. The application is dismissed.

Md. S/-

(Ashwani Kumar Singh, J)

AFR/NAFR	NAFR
CAV DATE	N/A
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