

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1098 of 2016

In
Civil Writ Jurisdiction Case No.3928 of 2016

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

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Khushbu Kumari @ Khushbu @ Ujala Devi, Daughter of Shri Nageshwar Singh, at present residing at her parents Village- Mainpura, Post Office- Neora, Vioa- Khagaul, Pin Code- 801113, Police Station Phulwarisharif, District- Patna and Legally married and Wedded Wife of Anand Kumar alias Anand Murti alias Tutu, Resident of Village- Nayanchak, Post Office- Alampur Gonpura Via- Khagaul, Police Station- Phulwarisharif, District- Patna, State Bihar.

... .. Petitioner

Versus

Anand Kumar @ Anand Murti @ Tutu, Son of Shri Ram Briksha Singh, Resident of Village- Nayanchak, Post Office- Alampur Gonpura, Via- Khagaul, Police Station- Phulwarisharif, District- Patna, State- Bihar.

... .. Respondent

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Appearance :

For the Petitioner/s : Mr. Shyam Kishore Sinha, Advocate
For the Respondent/s : Mr. Sanjeet Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 20-02-2020 This writ application was filed in the year 2016 by the wife of opposite party for a direction to the opposite party to make payment of the entire dues/arrear amount of the ad interim maintenance granted to her in Maintenance Case No. 111(M) of 2007. By the order passed in the said maintenance case a sum of Rs. 7,000/- per month was allowed to the petitioner w.e.f. 12.02.2008. During pendency of the present writ application the sole petitioner has died. At this stage I.A. No. 01 of 2019 has been filed for substitution on behalf of the father, mother and brother of the petitioner. Their submission in



the Interlocutory Application is that because the petitioner prior to her death was living with them and they have been spending on her, the order by which maintenance was awarded to the petitioner be executed in their favour.

Learned counsel for the opposite party has submitted before this Court that under Section 15 of the Hindu Succession Act, 1956 (hereinafter referred to as the 'Act of 1956'), the properties of a Hindu female dying intestate would first be succeeded by her son and daughter and by her husband.

Learned counsel also submits that in fact this writ application itself was a misconceived one inasmuch as the order passed by the learned Principal Judge, Family Court, Patna under Section 125 Cr.P.C. cannot be executed by filing a writ application. Learned counsel submits that in this regard the Family Court is itself competent to execute the order.

Taking note of the aforesaid facts and circumstances, this Court is of the considered opinion that the substitution application filed before this Court at this stage is wholly misconceived. In fact Section 128 of the Code of Criminal Procedure itself provides for enforcement of the order of maintenance. Section 128 read with Section 18 of the Family Court Act reads as under:-



“128. Enforcement of order of maintenance.-A copy of the order of ¹[maintenance or interim maintenance and expenses of proceeding, as the case may be,] shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to ²[whom the allowance for the maintenance or the allowance for the interim maintenance and expenses of proceeding, as the case may be,] is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the ³[allowance, or as the case may be, expenses, due].”

On a bare perusal of Section 128 Cr.P.C. , this Court is of the considered opinion that the very filing of the writ application for execution of the order passed in maintenance case was misconceived and at this stage allowing the substitution application despite having noticed the legal position as above, the Court would only be allowing the writ application to be carried out for another few years. This is a wrong remedy applied for.

The writ application is thus dismissed.

1. Subs. By Act 50 of 2001, sec. 4(i), for “maintenance” (w.e.f. 24-9-2001).
2. Subs. By Act 50 of 2001, sec. 4(ii), for “whom the allowance” (w.e.f. 24-9-2001).
3. Subs. By Act 50 of 2001, sec. 4(iii), for “allowance due” (w.e.f. 24-9-2001).



However, dismissal of the writ application will not be taken as any adjudication on the rights of the parents and brother of the deceased petitioner if they can seek their remedy before appropriate court/forum in accordance with law.

The writ application stands disposed of.

(Rajeev Ranjan Prasad, J)

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