

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.80 of 2021

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SAMPANNA HARASHEVARDHAN Resident of Quarter No. B 1, L.I.C. of India, Gaya Branch-1, Shaheed Bhagat Singh Colony, Mustafabad, Chandauti, Gaya-823001.

... .. Petitioner/s

Versus

PRATIMA KUMARI W/o Sampanna Harshevardhan Res.- Qrt. No. B-1, L.I.C. Gaya, Br-1, Saheed Bhagat Singh Colony, Mustafabad Colony, Chandauti, Gaya-823001.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajiv Nayan Singh Mr. Bauye Jee Jha (B.J. Jha) Mr. Shola Sandhwar
For the Respondent/s	:	Mr. Anshay Bahadur Mathur Mr. Mathur

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CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

ORAL ORDER

6 28-02-2022 Heard the learned counsel for the petitioner as well as the learned counsel for the respondent.

By the impugned order dated 28.01.2020, the learned Principal Judge, Family Court, Patna allowed the petition for *pendente lite* maintenance to the respondent and awarded Rs.20,000/- per month as maintenance as well as Rs.25,000/- lump sum for one time litigation cost. The learned Principal Judge, Family Court has also fixed the liability on the petitioner to pay the medical expenses incurred on indoor treatment of the Respondent.

The Matrimonial Case No. 927 of 2015 has been filed by the petitioner for decree of divorce against the respondent on



the ground of cruelty. During the pendency of that suit, a petition dated 23.05.2019 has been filed on behalf of the respondent under Section 24 of the Hindu Marriage Act, 1955 with a prayer to grant her maintenance *pendente lite* at the rate of Rs.46,500/- per month and litigation cost Rs.50,000/-.

The learned counsel for the petitioner has challenged the order on the ground of quantum of the *ad interim* maintenance. He has submitted that the learned Trial Court in its order has mentioned that total salary of the petitioner is Rs.87,238/-, whereas total deduction has been shown as Rs.62,121/- and net salary of the petitioner is Rs. 25117/-. He has also submitted that presently the petitioner is under liability of the maintenance of his old aged mother and from time to time, he has also made expenditure against the treatment of the respondent.

The learned counsel for the respondent has submitted that so far as the liability of maintenance of the mother is concerned, the mother herself is getting pension of Rs. 47,000/- per month and the liability of the mother is not on the shoulder of the petitioner. He has further submitted that the respondent was diagnosed with cancer and her treatment is going on in Tata Memorial Hospital, Mumbai. He has further submitted that



initially in Vellore, no malignancy was found but later on, she was referred to Tata Memorial Hospital, Mumbai where cancer was diagnosed and she is presently under treatment and she has to expend hefty amount on her treatment. He has further submitted that so far as the deduction in gross salary of the petitioner is concerned, only in order to make evasion in payment of the *pendente lite* maintenance, he is taking heavy amount from Banks as loan. He has also relied upon a decision, reported in *1991 (1) DMC 18 [Punjab & Haryana] (Savita Aggarwal v. R.C. Aggarwal)*, in which it has been held that if the entire salary is deposited as contribution towards General Provident Fund etc. that will not deprive the petitioner of her right to get maintenance *pendente lite*.

The learned counsel for the petitioner has filed the salary slip of the petitioner for the month of December 2021, which shows that his gross salary is Rs.1,39,173/-. Although, the deduction column shows that Rs.102485.86 are being deducted from his salary, but as observed in the case of Savita Aggarwal that should not be taken into account.

In the case of *Pratima Singh vs. Dr. Abhimanyu Singh Parihar, 1986 (1) DMC 301 M.P.*, at the rate of 50% of the income of the husband, after deducting the amount for



uncertainties, was taken into consideration.

Considering the fact that the respondent is suffering from cancer and she has to incur expenditure on her medical treatment, the maintenance *pendente lite* does not appear to be excessive in relation to the salary of the present petitioner. As such, I don't think any interference is required in the impugned order. Accordingly, this civil miscellaneous petition is dismissed.

It has been submitted by the learned counsel for the respondent that despite the speaking order of the learned Principal Judge, Family Court, Patna, not a single penny has been paid to the respondent up till now. If a petition for recovery of that amount is filed, the learned court below shall decide it as expeditiously as possible.

(Nawneet Kumar Pandey , J)

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