

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.562 of 2018

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

Khublal Sah, son of late Shiv Prasad Sah, permanently resident at Khaira Azam, Post Office: Reotith, P.S.-Baikunthpur, District-Gopalganj, presently residing at Sheonagar, Darjeeling More, P.S.-Pradhan Nagar, District-Darjeeling (W.B.)

... .. Petitioner/s

Versus

Srimati Devi, wife of late Parmeshwar Sah @ Rameshwar Sah, Resident of village-Khaira Azam, Post Office-Reotith, P.S.-Baikunthpur, District-Gopalganj.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Surendra Prasad Gupta, Advocate
For the Opposite Party	:	Mr. Indrajeet Bhushan, Advocate Mr. Manish Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 05-09-2022 Heard learned counsel for the petitioner and learned counsel for the sole opposite party.

Petitioner is aggrieved by and dissatisfied with the judgment dated 12.08.2016 passed by learned Principal Judge, Family Court, Gopalganj in CIS Case No.-Maintenance 301/2013 (Old Case No.-Maintenance 114/2010).

Petitioner has filed an application seeking condonation of delay in filing of the revision application. It is submitted that the petitioner got knowledge of the impugned judgment only on 17.03.2018 whereafter he has filed the present application within time. Earlier notice was issued to the sole opposite party in limitation as well as admission matter. The



opposite party has entered appearance. No affidavit in opposition has been filed.

This Court has heard learned counsel for the parties on the limitation as well as admission matter.

While persuading this Court to condone the delay, learned counsel for the petitioner has taken the Court through the kind of order passed by the learned Principal Judge, Family Court. It is submitted that the maintenance case was filed on 25.05.2010. The learned Principal Judge, Family Court has recorded in his order that both the parties had left doing pairvi of the case since long and despite there being several opportunities given to the parties they did not come forward to press the matter.

Learned counsel submits that even though the applicant had not come forward to press the matter, the learned Principal Judge fixed the case for judgment and by the impugned judgment directed the opposite party-petitioner to pay a sum of Rs.1,000/- per month as maintenance allowance to the applicant-opposite party. It is submitted that the learned Principal Judge has taken note of the stand of the petitioner denying his marriage with the opposite party. The opposite party had not examined any witness to support her case that after



death of her husband she was married to this petitioner. It is, therefore, submitted that the learned Principal Judge, Family Court, Gopalganj should have dismissed the application in want of prosecution but that has not been done and impugned judgment has been passed.

It is further submitted that before fixing the case for judgment at least one opportunity should have been given to the learned counsel for the petitioner who had entered appearance in the learned court below on his behalf by calling upon him to see the records or by serving a notice upon him because it was a long time back that both the parties had entered appearance and they may not have the updated the records of the dates fixed in the matter.

Learned counsel for the opposite party has opposed this application. It is submitted that by the impugned judgment, the learned Principal Judge, Family Court has allowed a meagre sum of Rs.1000/- per month only which needs interference.

Having regard to the submissions noted hereinabove and the materials available on the record, this Court finds that the maintenance case was filed in the year 2010 and after examining herself the applicant had not examined any witness in support of her case. She had not adduced any documentary



evidence. These are recorded in paragraph '5' of the impugned judgment under the heading 'FINDINGS' by the learned Principal Judge, Family Court.

It is also recorded that both the parties had left doing pairvi of the case since long but thereafter it is recorded that after giving several opportunities to the parties they did not come forward to press this matter. It is not known as to how and in what manner that several opportunities were granted to the parties. Merely fixing the date one after another for several years, in the facts and circumstances of the present case, may not be taken as granting several opportunities to the parties.

In the opinion of this Court, if the applicant had left the pairvi of the case, the learned Principal Judge would have dismissed the case itself for non-prosecution but in case he had fixed the case for further steps to be taken by the opposite party-petitioner it should have been brought to the notice of the learned advocate representing the opposite party at least once. The opposite party has raised an issue with regard to the claim of the applicant that she was married with the opposite party. At least some prima-facie finding was required to be made by the learned Principal Judge, Family Court on the basis of the materials on the record. That has not been done. Even the



quantum of income of the opposite party has not been assessed.

In these circumstances, this Court finds it just and proper to condone the delay and set aside the impugned judgment remanding the matter back to the learned Principal Judge, Family Court, Gopalganj for fresh consideration.

Accordingly, the impugned judgment is set aside. The learned Principal Judge, Family Court, Gopalganj shall give an appropriate opportunity to the applicant as well as the opposite party to produce their respective evidences, wehreafter the matter shall be decided on its own merit.

Both the parties shall appear in the learned court below latest by 26.09.2022. If anyone of them do not appear, the learned court below shall proceed further in accordance with law.

Let the entire exercise be done within a period of six months from the date of communication of this Court.

This revision application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

