

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No.237 of 2017**

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

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Santosh Kumar Sah @ Santosh Kr. Sao S/o Krishna Prasad Sah, resident of  
Village- Kurshakanta, P.S.- Kurshakanta, District- Araria.

... .. Petitioner

Versus

Dimpal Kumari W/o Santosh Kumar Sah, D/o Late Ram Prasad Sah, resident  
of Village P.O.- Sikti, P.S.- Sikti, District- Araria.

... .. Opposite Party

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**Appearance :**

For the Petitioner/s : Mr.Sanjay Kumar Sharma, Advocate  
For the State : Mr.

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**ORAL ORDER**

5      01-12-2022                      From the office notes, it appears that the notice has  
  
been duly served upon the Opposite Party No.2.

This Court finds that Opposite Party No. 2 has not  
entered appearance. In such circumstance, this revision  
application has been taken up for consideration finding that it  
has already remained pending for over five years.

Petitioner in the present case is aggrieved by and  
dissatisfied with the judgment dated 27.05.2016 passed by  
learned Principal Judge Family Court, Araria in Matrimonial  
Case No. 179 of 2011. By the impugned order while considering  
an application under Section 9 of the Hindu Marriage Act, 1955  
seeking restitution of conjugal right by the husband-petitioner,  
the learned Principal Judge, Family Court, Araria clubbed the  
another case being Maintenance Case No. 189 of 2015 filed by



the applicant-wife. Both the cases were taken up together for consideration. In ultimate analysis, the learned Family Court held that the husband-petitioner could not prove his case for restitution of conjugal right. As a result thereof, the learned court below dismissed the said petition but so far as the maintenance case is concerned, the learned Family Court observed that the husband-petitioner is obliged to maintain his legally wedded wife and his child. After saying so, the learned court directed the husband-petitioner to pay a sum of Rs. 4,000/- per month to the applicant-wife and the child from the date of institution of the maintenance case i.e. 07.08.2015.

In this Court, learned counsel for the petitioner has argued that the learned Family Court has awarded the maintenance amount without there being any consideration to the case of the husband-petitioner that his wife was earlier working as Anganbari Sevika and now she is a teacher in a government middle-school, Sikti and she was getting regular salary whereas the husband-petitioner was earlier employed in Sahara, India as an agent but now he is unemployed.

Taking note of the aforesaid submissions advanced on behalf of the petitioner, this Court issued notice to the Opposite Party on 13.12.2017 and stayed the operation of the



impugned order till further order.

As stated above, the Opposite Party (wife) has been validly served but she has not entered appearance. There is, therefore, no opposition to the present application.

This Court has perused the impugned judgment. This Court is convinced that the learned Principal Judge, Family Court has not duly discussed the case of the parties and the evidences adduced by them insofar as they relate to and have bearing upon the question of maintenance. The plea of the husband-petitioner that his wife is gainfully employed having remained uncontroverted, this Court finds no hesitation in setting aside the impugned judgment. The Judgment impugned in this revision application is therefore, set aside.

This revision application is allowed.

**(Rajeev Ranjan Prasad, J)**

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