

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.954 of 2018

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

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Dilip Kumar Gupta @ Dileep Kumar Gupta S/o Vishwanath Gupta, resident of Village- Shivpur, Mathiya, Main Road, P.S.- Mairwa, Dist.- Siwan.

... .. Petitioner

Versus

Madhuri Devi W/o Dilip Kumar Gupta, Resident of Village- Shivpur Mathiya, Main Road, P.S.- Mairwa, Dist.- Siwan, at present residing at Village- Guthani, P.S.- Guthani, Dist.- Siwan. Opposite Party

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Appearance :

For the Petitioner : Mr. Jitendra Kumar, Advocate

For the Opposite Party : Mr. Ranjit Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 12-09-2022

I.A. No. 2360 of 2018

For the reasons stated in the application, let the delay be condoned.

Heard learned counsel for the petitioner and learned counsel for the opposite party.

By the impugned judgment dated 17.03.2017, the learned Principal Judge, Family Court, Siwan has been pleased to allow a maintenance allowance of Rs. 3,000/- per month to the opposite party.

The petitioner has assailed the impugned judgment on the grounds inter alia that prior to passing of the impugned judgment the matrimonial suit filed by this petitioner seeking a decree of divorce and annulment of marriage was allowed by the same court on 10.01.2017. The divorce has been granted on the ground on desertion and cruelty. It is submitted that once the



opposite party has been found to have deserted the petitioner and that was proved in a duly constituted proceeding before the learned Principal Judge, Family Court, Siwan, the same was required to be considered and only upon proper consideration of the same, an appropriate order could have been passed by the learned court below.

Mr. Ranjit Kumar Pandey, learned counsel for the opposite party has opposed this application. In course of his opposition, however, learned counsel does not dispute that prior to passing of the impugned judgment, the learned Principal Judge had already dealt with the divorce case and divorce was granted on account of desertion as well as cruelty. It is not in dispute that the order granting decree of divorce has not been considered by the learned court below.

Learned counsel for the opposite party has informed this Court that the order granting divorce is under challenge before this Court in an appeal being M.A. No. 375 of 2017. The appeal has been admitted, therefore, the said order is sub-judice before this Court. It is further informed that presently the petitioner is paying Rs. 3,000/- per month to the opposite party, however, arrears of maintenance has been accumulated recently for a period of 9 months. One cheque which was issued towards maintenance of five months has recently bounced. Learned counsel submits that



for the time being till the final decision is taken in the miscellaneous appeal pending before this Court, the impugned order need not be interfered with.

Learned counsel for the petitioner has submitted at this stage that hearing and disposal of the miscellaneous appeal is likely to take substantial time. The judgment granting decree of divorce to the petitioner is though sub-judice but is still operating. In such circumstances, the impugned order which has been passed without consideration of the said judgment cannot be allowed to survive. As a matter of good gesture towards the opposite party, learned counsel submits on instruction received in the first half of the Court hour that the petitioner agrees to continue to pay Rs. 3,000/- per month for the time being till the final decision is taken by the learned Principal Judge, Family Court, Siwan in the maintenance case and on this assurance learned counsel submits that the impugned order be set aside and the matter be remitted to the learned Principal Judge, Family Court for a fresh consideration.

Having heard learned counsel for the petitioner and the opposite party, this Court is of the considered opinion that in this case, since the learned Principal Judge has not at all looked into the judgment and the decree granting divorce to the petitioner, the impugned order is required to be set aside with a direction to the



learned court below for giving a fresh consideration.

The impugned order is, thus, set aside. The matter is remitted to the learned Principal Judge, Family Court, Siwan for giving a fresh consideration to the maintenance case after allowing adequate opportunity to both sides to adduce their respective evidences. Till such final decision is taken by the learned court below, as agreed by the petitioner in his submission which has been informed to this Court, he will continue to pay Rs. 3,000/- per month to the opposite party. This has been recorded as an assurance given by the petitioner before this Court through his learned Advocate and non-compliance of the same would result in initiation of an action for willful disobedience and disregard to the order of this Court.

This 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'.

