

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.41 of 2020

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Anil Kumar Upadhyay Son of Sri Niwas Upadhyay Resident of Village-
Katjha P.O.-Nagpura P.S.-Rajpur District-Buxar, Presently reside at Sector
No.2, Side No.-5, Quarter NO-CD-633, P.S.-Dhurba, District-Ranchi,
Jharkhand.

... .. Petitioner/s

Versus

Arti Devi Wife of Anil Kumar Upadhyay D/o-Late Din Dayal Tiwari Resident
of Village- Katjha, P.O.-Nagpura, P.S.-Rajpur, District-Buxar, Presently reside
at Village-Saraya, P.O. and P.S.-Kochas, District-Rohtas Sasaram.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajiv Ranjan Kr. Pandey
For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 05-07-2022 Heard Mr. Rajiv Ranjan Kumar Pandey, learned
counsel for the petitioner.

The petitioner is the husband and has filed Divorce
Case No. 119 / 2015 against the respondent-wife.

Petitioner is aggrieved by the order dated 01/02/2018
passed by learned Principal Judge, Family Court, Buxar in
Divorce Case No. 119 / 2015 whereby the learned Principal
Judge, Family Court, Buxar has directed the petitioner -
husband to pay a sum of Rs. 4,000/- per month to the
respondent-wife, Rs. 1,000/- per month to the minor daughter
towards maintenance pendente lite and also pay Rs. 10,000/- as
litigation cost.

Learned counsel for the petitioner submits that



learned Principal Judge has committed gross error in law and facts while directing the petitioner to pay maintenance to his wife and daughter pendente lite and the litigation cost inasmuch as the petitioner is an unemployed person dependent upon his father and has got no source of his independent income. He submits that insofar 16 *bighas* of land allegedly owned by the petitioner is concerned, the same has been encroached at the behest and instance of the respondent -wife by one Vindhyachal Upadhyay and settlement cost of that land is being received by the wife (respondent), which would be evident from the FIR lodged by the wife against the petitioner bearing Rajpur P.S. Case No. 288 / 2018. Accordingly, submission is that admission of the wife in the statement made in the FIR has not been taken into account by the learned Principal Judge, Family Court, Buxar while awarding the interim maintenance.

I have heard learned counsel for the petitioner and have gone through the impugned order. It appears from the record that the respondent is the legally wedded wife and the marriage was solemnized in the year 1997. Out of the wedlock one girl child has born. According to the respondent-wife she has been ousted from her matrimonial home and after that she has been living with her father, who has also died. Accordingly,



she does not have any source of independent income to maintain her daughter and herself and to meet the litigation cost. It appears that the petitioner has contended that the wife has got independent income inasmuch as she is working and earns good amount from tailoring and private tuition. In support of his submission no material has been brought on record by the petitioner either to show that the respondent-wife is receiving the settlement amount from the *bataidaar* against the 16 *bighas* of land and also that the wife has got independent income out of tailoring and private tuition.

Accordingly, I find that interim maintenance awarded by the court is not excessive and the court below has not committed material irregularity and / or jurisdictional error while passing the impugned order.

Accordingly, this civil miscellaneous application is rejected.

(Anil Kumar Sinha, J)

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