

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No. 5 of 2020

with

I.A. No. 01 of 2022

In

Miscellaneous Appeal No.367 of 2018

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Ranjeet Kumar Son of Sri Ram Prakash Singh Resident of Mohalla- Rajapur,
Mainpura, House No. 1090/2 Meena Sadan, East Side of Vishal Bajrangbali
Temple, Police Station- Patliputra, District- Patna.

... .. Petitioner

Versus

Kanchan Gangotri W/o Ranjeet Kumar, D/o Sri Arun Chaudhary Resident of
Mohalla- Nabiganj, Chapra, Police Station- Bhagwan Bazar, District- Chapra,
Saran.

... .. Opposite Party

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Appearance :

For the Petitioner	:	Mr. Ajit Kumar, Advocate
	:	Mr. Abhay Kumar, Advocate
In Person (Husband)	:	Mr. Ranjeet Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

4 05-07-2024 The present Review Application has been filed by the

applicant/original appellant of Miscellaneous Appeal No. 367 of

2018 for review of the order dated 03.12.2019 passed by the

Division Bench of this Court.

2. Heard Mr. Ajit Kumar, learned Advocate for the

applicant assisted by learned Advocate Mr. Abhay Kumar and

Mr. Ranjeet Kumar appeared in-person (applicant).

3. It is pertinent to note, at this stage, that the

applicant-husband is also present in the Court and he wanted to

say something on merits, therefore, he was also heard by this

Court.



4. It has been mainly contended on behalf of the applicant that the present opponent-wife filed petition for divorce before the concerned Family Court under the Hindu Marriage Act, the applicant-husband submitted written statement and relying upon some averments made in the written statement of the applicant-husband, the Family Court passed the decree of divorce in favour of the wife. The applicant-husband, therefore, preferred the Appeal. It is contended that when the Appeal was listed for hearing before this Court, the applicant appeared in-person, whereas learned Advocate was appearing on behalf of the Respondent-wife. It is submitted that without calling for the record and proceedings from the concerned Family Court, this Court passed the order on 03.12.2019. It is further submitted that while passing the aforesaid order dated 03.12.2019, the Hon'ble High Court has also committed an error by relying upon the written statement of the applicant-husband filed before the Family Court. It is also contended that photocopy of the written statement was also produced before the Court. It is thereafter contended that while dismissing the Appeal, this Court also observed that the present opponent-wife shall not claim any alimony/maintenance for her in future.

5. At this stage, it is submitted that now the applicant has also filed separate Interlocutory Application in which the applicant has prayed that this Court may pass order for the



custody of the child to the applicant and further direction be given to the opponent wife that she may not make any claim over the flat owned by the applicant.

6. Learned Advocate for the applicant has tried to point out the case of the applicant on merits and contended that while passing the order dated 03.12.2019, this Court has not considered various aspects and thereby committed an error and, therefore, the said order be reviewed. Learned Advocate, therefore, urged that when the applicant is having good case on merits, the aforesaid order be reviewed and the matter be heard again.

7. We have considered the submissions canvassed by the learned Advocates and we have also perused the materials on record. It would emerge from the record that this Court has dismissed the Appeal preferred by the applicant/original appellant *vide* order dated 3.12.2019. We have specifically observed that the present opponent-wife shall not claim any maintenance/alimony in future. We have also specifically observed in the last paragraph of the order that for the custody of the child, it is open for the applicant-husband to file appropriate proceeding before the appropriate forum. Despite the aforesaid specific liberty granted by this Court, the applicant has filed Interlocutory Application wherein the aforesaid prayer has been made that the custody of the child be handed over to



him and the direction be issued to the opponent-wife that she may not claim flat from the present applicant. Thus, it appears that for the aforesaid purposes, Review Application has been filed by the applicant.

8. From the averments made in this application and from the submissions canvassed by the applicant himself in-person as well as his Advocate it would reveal that the applicant has filed this Review Application by contending that there is an error committed by this Court while passing the impugned order on merits.

9. At this stage, we would like to refer to the provisions contained in Order XLVII Rule (1) of the Code of Civil Procedure, 1908 which provides as under :-

1. Application for review of judgment. - (1) Any person considering himself aggrieved -
(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
(b) by a decree or order from which no appeal is allowed, or
(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.



(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review.

¹[Explanation. - The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]

10. Keeping in view the aforesaid provision, the facts of the present case, as observed hereinabove, are examined. We are of the view that the applicant has failed to point out any circumstances which are referred in the aforesaid provision for filing of the present Review Application. Applicant has failed to point out any error apparent on the face of the record. Further, it is not open for the applicant or his Advocate to reargue the matter on merits and finding fault with the reasoning recorded by this Court in the Review Application. The best course, which was open for the applicant, was to file appropriate proceeding before the Hon'ble Supreme Court challenging the order dated 03.12.2019. However, for the reasons best known to the applicant and his Advocate, the present Application for Review has been filed. It is pertinent to note that now the grievance is raised that this Court did not call for the record and proceedings from the Family Court. However, it is pertinent to note that this



Court has considered the written submission and the materials which was produced by the parties and looking to the facts and circumstances of the case, this Court thought it fit to dispose of the Appeal at admission stage and the said fact is revealed from first paragraph of the order. It is also relevant to note that full opportunity of hearing was given to the applicant-husband who had argued the case himself before this Court. He had not raised any grievance at the relevant point of time that this Court may not hear the Appeal at admission stage and the Appeal be admitted and thereafter record and proceedings be called for from the Family Court. Now, at this belated stage, the aforesaid grievance has been raised and, therefore, we are of the view that this is nothing but an afterthought on the part of the applicant and with some oblique purpose, the present application has been filed. We have observed so in view of the prayer made by the applicant in Interlocutory Application in which he has specifically prayed that the custody of the child be handed over to him and wife may be directed not to claim flat from him. Thus, it appears that with a view to pressurize the wife who is now claiming certain things from the husband and when the wife is not permitting the applicant to meet the child it appears that the present proceeding has been filed.

11. In any view of the matter, we are of the view that when the applicant has failed to point out any error apparent on



the face of the record or any of the grounds stated in the
aforesaid provision of law, we are not inclined to entertain the
present application and, therefore, this Review application is
dismissed with cost of Rs. 2,500/-, which the applicant shall
deposit with the Patna High Court Legal Services Committee,
Patna within a period of thirty days from today.

12. I.A. No. 01 of 2022 also stands disposed of,
accordingly.

(Vipul M. Pancholi, J)

(Prabhat Kumar Singh, J)

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