

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.492 of 2017**

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Faizan @ Md. Faijan Son of Ajimuddin Resident of Village- Jalmilic , P.O.
Nejagachh, Police Station- Kurlicourt, District- Kishanganj.

... .. Petitioner

Versus

Muslima Khatoon Wife of Md. Faizan Resident of Village- Jalmilic , P.O.
Nejagachh, Police Station- Kurlicourt, District- Kishanganj.

... .. Respondent

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Appearance :

For the Petitioner/s	:	Mr. Abdul Mannan Khan, Advocate Mr. Hafiz Shahbaz Arif, Advocate
For the Respondent/s	:	None

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 01-04-2024

Present learned counsel for the petitioner. However,
on repeated calls, none appears for the respondent.

02. Heard learned counsel for the petitioner and I
intend to dispose of the present petition at the stage of
admission itself since it has been observed on the last date of
hearing, that the respondent has already been served and another
opportunity was given to her despite that she did not appear.

03. In the instant petition filed under Article 227 of
the Constitution of India, the petitioner has challenged the order
dated 08.02.2017 passed in Civil Misc. Appeal No. 04 of 2015
by the learned District & Sessions Judge, Kishanganj
reversing/setting aside the order dated 09.10.2015 passed in
Case No. C 1306 of 2010 by the learned Judicial Magistrate- 1st



Class, Kishanganj whereby and whereunder the learned trial court dismissed the complainant/respondent's case filed under Sections 18, 19, 20, 21 and 22 of the Protection of Women from Domestic Violence Act, 2015 (hereinafter referred to as 'the Act').

04. Learned counsel for the petitioner submits that the learned appellate court went beyond its jurisdiction and passed the order, which is not sustainable in the eye of law. The impugned order is unjust, improper and without jurisdiction as no civil miscellaneous appeal is maintainable against the order passed under the Act by the Judicial Magistrate. Learned counsel further submits that only an appeal under Section 29 of the Act is maintainable before the Court of learned Sessions Judge against the order(s) passed by the learned Judicial Magistrate under the Act.

05. I find merit in the submission made by the learned counsel for the petitioner. By no stretch of imagination, a civil misc. appeal would lie against an order passed by a Judicial Magistrate- 1st Class on a petition filed under Sections 18, 19, 20, 21 and 22 of the Act. When specific provision has been made under Section 29 of the Act, an appeal would lie only to the Sessions Court against such order and not civil misc. appeal



as has been entertained by the learned District Judge, Kishanganj.

06. For the aforesaid reason, the order dated 08.02.2017 passed by the learned District & Sessions Judge, Kishanganj in Civil Misc. Appeal No. 04 of 2015 is set aside. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	03-04-2024
Transmission Date	NA

