

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1405 of 2018**

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Kumar Sidharth, son of Sri Rajendra Pratap Singh, resident of village - Kulhariya, PO Kulhariya, PS - Koilwar, District - Bhojpur at present residing at Flat No. 307, 3rd Floor Mallikarjuna Residency, Vandana Puri Colony, Near Vijetha Supermarket, Beeramguda Ameanapur, PS - Amenapur, District - Medak Telangana, Pin Code - 502032.

... .. Petitioner/s

Versus

Smt. Rekha Singh, wife of Kumar Sidharth, daughter of Late Sidh Nath Singh, resident of village - Semariya Khurd, PO - Dhelhari, PS - Rivilganj, District - Saran at Chapra at present residing at Mohalla - D.N. Singh Road, Kharman Chak Dhevar Gate PO - Joksar, PS - Bhagalpur Town, District - Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ravindra Kr Sinha No.2, Advocate
For the Respondent/s : Mrs.Rekha Singh (In Person)

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

Date : 10-12-2024

Heard learned counsel for the petitioner as well as respondent in-person.

2. The petitioner is aggrieved by the order dated 29.06.2018 passed by the learned Principal Judge, Family Court, Bhojpur at Ara in Matrimonial (Divorce) Case No. 10 of 2013 whereby and whereunder interim maintenance of Rs.25,000/-per month and Rs.1500/- as litigation cost on each date in the case have been allowed by the learned Principal Judge, Family Court to the respondent.

3. The learned counsel for the petitioner submits that the impugned order has been passed without any justification.



There has been no document on record showing income of the petitioner, who was not heard and the order has been passed in his absence. The learned counsel further submits that Matrimonial Case No. 10 of 2013 has been filed by the petitioner seeking dissolution of marriage against the respondent. Despite service of notice, respondent did not appear and matter proceeded *ex-parte* and thereafter, an *ex-parte* order has been passed dissolving the marriage between the petitioner and the respondent. After expiry of the statutory period for appeal, the petitioner solemnized another marriage on 18.12.2015. Thereafter, Misc. Case No. 06 of 2016 has been filed in the court of learned Principal Judge, Family Court, Bhojpur at Ara on 25.02.2016 under Order 9 Rule 13 of the Code of Civil Procedure for recall of the *ex-parte* judgment and decree dated 26.04.2014 passed in Matrimonial (Divorce) Case No. 10 of 2013. The learned Principal Judge, Family Court, Bhojpur at Ara vide order dated 14.05.2018 passed in Misc. Case No. 06 of 2016 recalled the *ex-parte* judgment dated 26.04.2014 and decree dated 01.05.2014 passed in Matrimonial (Divorce) Case No. 10 of 2013 and restored the said case to its original file. The petitioner has challenged the order for restoration passed in Misc. Case No. 06 of 2016 by filing Misc.



Appeal No. 620 of 2018 before this Court. The respondent filed a petition on 05.06.2018 under Section 24 of the Hindu Marriage Act seeking interim maintenance, which was allowed by the learned Principal Judge, Family Court vide order dated 29.06.2018 and the same is under challenge before this Court.

4. The learned counsel further submits that the impugned order has been passed in a hasty manner without waiting for the appearance of the petitioner. No inquiry has been made regarding the income of the petitioner and without any proper inquiry the impugned order has been passed. While passing the order, the learned Principal Judge, Family Court has not recorded any finding about the income of the petitioner and without any material regarding income of the petitioner, the impugned order has been passed, which *prima facie* appears to be perverse. The learned counsel refers to the decision of this Court in the case of ***Vikash Kumar Dubey vs. Savita Devi*** reported in ***2007 (4) PLJR 652*** on the point that the Family Court is required to record its finding about the income of the petitioner while allowing ad interim maintenance. The learned counsel further refers to the decision of this Court rendered in the case of ***Sanjay Kumar Jha vs. Premsheela Devi*** reported in ***2017 (4) PLJR 125*** on the point that litigation cost should not



be made payable every month but should be awarded lump sum. The learned counsel further submits that the learned Single Judge in both the cases held that the court should *prima facie* determine the income of the husband and the wife in order to grant maintenance *pendente lite* to the applicant spouse. The learned Single Judge further held that before ordering for ad interim maintenance under the provision, the court is required to carefully examine the matter regarding income of both the parties. The learned counsel further submits that the petition was filed on 05.06.2018 and the impugned order was passed on 29.06.2018 without granting any opportunity to the petitioner to oppose the petition. It shows undue haste on part of the court. Thus, learned counsel submits that the impugned order is bad in law as well as on facts and the same is liable to be set aside by this Court.

5. On the other hand, the respondent submits that there is no infirmity in the impugned order as the same has rightly been passed. The respondent further submits that the petitioner is graduate in Engineering and also in Management from XLRI, Jamshedpur and had been working in a multinational company and on the date of passing of the impugned order, his earning was Rs. 2 lacs per month. He is having ancestral property worth



Rs. 25 crores. The respondent further submits that despite a number of opportunities, the petitioner did not file any rejoinder or did not appear before the learned trial court, so the learned Principal Judge, Family Court proceeded in the matter and allowed the interim maintenance amount @ Rs. 25,000/-per month and also litigation cost of Rs. 1500/- for each date, which is completely justifiable. The respondent further submits that the petitioner has not been making payment of the amount of interim maintenance which was allowed by the court of learned Principal Judge, Family Court, Bhagalpur. The respondent also submits that even in terms of order of this Court, there has been outstanding dues against the petitioner as the petitioner refuses to comply the orders of this Court.

6. I have given my thoughtful consideration to the rival submission of the parties and perused the record.

7. Admittedly, the Matrimonial Case No. 10 of 2013 has been filed by the petitioner and once the *ex-parte* judgment and decree has been set aside, it was incumbent upon the petitioner to appear before the learned Principal Judge, Family Court, Bhojpur at Ara on the date fixed in the case after restoration. If application for interim maintenance was filed and was put up for hearing, the petitioner ought to have appeared



and contested the same before the learned Principal Judge, Family Court which he apparently did not do. The petitioner cannot take advantage of his own wrong as he did not appear in his own case. The petitioner is a graduate in engineering and also in management from a reputed institution, it is expected that he is in a position to take care of his wife. In the given facts of the case, when there has been no representation on behalf of the petitioner, whatever material was before the learned Family Court in the form of the submission of the respondent wife and the learned Family Court proceeded on that premises and, for this reason, I do not find any infirmity in the impugned order. The decisions cited by the petitioner could not be of much help as the learned Single Judge in the case of ***Vikash Kumar Dubey*** (supra) has stated the settled preposition of law that before allowing ad interim maintenance, the assessment of the income of both the parties should be recorded.

8. However, if the petitioner is aggrieved by the impugned order dated 29.06.2018, the course is open for the petitioner to approach the same court with relevant documents and making prayer for modification in the orders. Since it is the claim of the petitioner that he was not heard, hence, the petitioner is directed to place all the facts before the learned



Principal Judge, Family Court, Bhojpur at Ara, who shall take a decision on the basis of material available on record as this Court would not like to go into the factual aspects of the matter and is only concerned with any illegality or error of jurisdiction in passing the impugned order, which is not apparent from the records.

9. Thus, the petitioner is at liberty to move before the learned Principal Judge, Family Court, Bhojpur at Ara with relevant documents by filing appropriate application and to seek modification of the order.

10. For the aforesaid reasons, this Court is not inclined to interfere with the impugned order and, as such, the same is affirmed.

11. Accordingly, the present petition stands dismissed with the aforesaid liberty granted to the petitioner.

12. Pending application (s), if any, also stand (s) disposed of.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.12.2024
Transmission Date	NA

