

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No 214 of 2024

Arising Out of PS. Case No.- Year-0 Thana- District- Muzaffarpur

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Vishal Shah @ Vishal Sah Son of Binay Kumar Shah Resident of 64/65 Shri Arobindo Road, Salkia, Howrah Rakhee Cinema Complex, 2nd Floor, District-Howrah, West Bengal 711106. Current Address-816 W Royal Ln, Irving, Texas, 75039 United State of America. Mob-410-940-9992

... .. Petitioner/s

Versus

1. Monalisha Gupta Wife of Vishal Shal Resident of 64/65 Shri Arobindo Road, Salkia, Howrah, Rakhee Cinema Complex 2nd Floor, District-Howrah, West Bengal-711106
2. The State of Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Gaurav Prakash
For the Respondent/s : Mr.Jharkhandi Upadhyay

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CORAM: HONOURABLE MR JUSTICE ARVIND SINGH CHANDEL

ORAL JUDGMENT

Date : 25-09-2024

This petition has been preferred by the petitioner being aggrieved with the judgment dated 16.10.2019 passed by the learned Principal Judge, Family Court, Muzaffarpur in Maintenance Case No 229 of 2018 whereby and where under the learned Family Court allowed the application of the opposite party – wife filed under Section 125 of the Cr P C and directed the petitioner to pay a monthly maintenance of Rs 25,000/- to the opposite party – wife from the date of filing of the application, i e, 05.07.2018.



2 Learned counsel for the petitioner would submit that in the maintenance case, even after the submission of time petition by the petitioner herein, the learned Family Court, on the ground that the petitioner is willfully not appearing before it, passed the ex parte order of maintenance vide impugned order dated 16.10.2019. Since no opportunity of hearing has been provided to the petitioner in the said maintenance case, therefore, on this ground only, the impugned order is liable to be set aside.

3 Learned counsel for the opposite party – wife opposes the argument raised by the learned counsel for the petitioner and submits that since the petitioner herein willfully not appeared before the Family Court, therefore, the learned Family Court rightly passed the ex parte order against him. Thus, the order passed by the learned Family Court is according to law and does not warrant any interference by this Court.

4 Heard the learned counsel for the parties and perused the impugned order as well as the record of the learned Court below.

5 Perusal of the order sheets of the Court below shows that on 06.08.2018, when the matter was fixed, an application for granting time for the presence of the petitioner was filed. However, the learned Family Court again posted the matter on



28.09.2018 and directed the petitioner to remain present physically before it. On 28.09.2018, when the matter was called, the petitioner was not present before the Family Court and again a time petition has been preferred by the learned counsel for the petitioner seeking two months time for the presence of the petitioner and it was categorically mentioned that the petitioner was residing at USA and after getting the leave from his employer, he will return to India. Subsequently, within a span of one month, i.e., on 26.10.2018, the learned Family Court, mentioning the fact that in spite of the order passed by the Court, the petitioner herein is not present physically, fixed the hearing of the case ex parte and later on, the ex parte order has been passed by the learned Family Court against the petitioner.

6 Perusal of the above mentioned order sheets clearly shows that though the petitioner has been served notice through e-mail but at the time of service of notice, he was residing at USA in connection with his job and in the application, it has been categorically mentioned by him that after taking leave from his employer, he will be able to appear before the Court after two months. Even after that, the learned Family Court, even elapse of two months, on the ground that the petitioner herein is willfully not appearing before the Family Court, fixed the hearing of the



case ex parte vide order dated 26.10.2018. Thus, on this ground only, the impugned order is liable to be set aside.

8 Accordingly, the impugned order dated 16.10.2019 is set aside and the matter is remitted back to the concerned Family Court to decide the maintenance case afresh after giving reasonable opportunity of hearing to both the parties.

9 Both the parties are directed to appear before the Court below on 30.10.2024

10 Since the matter is of the year 2018, the learned Family Court is expected to conclude the proceeding and pass the final order as early as possible preferably within a period of one year from the date of appearance of the parties, i e, 30.10.2024.

11 The record of the Family Court be sent to the Family Court along with the copy of this order for needful.

12 This revision petition is allowed.

(Arvind Singh Chandel, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.09.2024
Transmission Date	26.09.2024

