

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.237 of 2022**

Rinki Devi @ Rinki Kumari W/o Rajesh Kumar Pathak, D/o Shaligram Prasad, Resident of Village- Ghoshi, P.S.- Ghoshi, District- Jehanabad.

... .. Petitioner

Versus

Rajesh Kumar Pathak S/o Santosh Kumar Pathak Resident of Village- Sadhukera, P.O.- Lapung, P.S.- Lapung, District- Ranchi (Jharkhand).

... .. Respondent

Appearance :

For the Petitioner/s : Mr. Uday Kumar, Advocate
For the Respondent/s : Mr. Ankit Raj, Advocate

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

Date : 01-07-2024

Heard learned counsel for the petitioner and the learned counsel for the respondent.

02. The present petition has been by the petitioner under Article 227 of the Constitution of India for setting aside the order dated 18.09.2021 passed by the Principal Judge, Family Court, Jehanabad in Misc. Case No. 35 of 2017 whereby and whereunder the misc. case was dismissed due to absence of the petitioner and also for non-compliance of order by the court.

03. Learned counsel for the petitioner submits that the petitioner has filed Maintenance Case no. 44 of 2015 and vide order dated 03.05.2017, the learned Principal Judge, Family Court, Jehanabad ordered for payment of maintenance @ Rs. 2,000/- per month from the date of application to the petitioner



while allowing the respondent to make the payment of arrears of maintenance in 10 equal installments. When the respondent failed to make payment, the petitioner filed the misc. case in which a notice was issued to respondent who entered his appearance and handed over a cheque of Rs. 24,200/- in the court itself. The misc. case was continued in which the respondent was required to make payment of rest amount to the petitioner but the respondent did not make payment of the balance amount. In the said misc. case, the petitioner filed an application on 28.03.2019 to increase the amount of maintenance. The petitioner has been appearing in the case on each and every date and on 21.01.2020, the petitioner filed her attendance and made prayer that respondent was knowingly not appearing in this case whereas respondent was making appearance in another case before the court. Accepting the prayer of the petitioner, the petitioner was directed to file notice. However, in the meantime, Covid-19 intervened and the functioning of the court got hampered. During this period, all of sudden, the misc. case was dismissed on 18.09.2021 due to non-prosecution and for non-compliance of the order passed by the learned Family Court. Learned counsel further submits that the learned Family Court has not considered the fact about it was a



period of Covid-19 when normal functioning of the courts were curtailed and running through virtual mode. Further, the learned Family Court did not consider the fact that the respondent was having notice who chose not to appear and the respondent prayed to make payment of the balance amount. Learned counsel further submits that the petitioner being a lady has been put to destitution and vagrancy due to the acts of the respondent. Since the orders for maintenance have been passed in the year 2017, the learned Family Court ought to have appreciated that maintenance amount was too meager and needed enhancement. The learned Family Court should not have dismissed the misc. case without appreciating all these facts. Therefore, the impugned order dated 18.09.2021 suffers from jurisdictional error and it is an erroneous order.

04. Learned counsel appearing on behalf of the respondent vehemently opposes the submission made on behalf of the petitioner. Learned counsel for the petitioner submits that the respondent is himself a labourer and he is not in a position to make payment of any enhanced amount as he has been finding it difficult to pay her the amount of Rs. 2,000/- per month as already ordered by the learned Family Court. Learned counsel further submits that due to non appearance and non compliance



of the order, the Misc. Case No. 35 of 2017 has been dismissed and the order of dismissal is proper and does not suffers from any infirmity.

05. Having regard to the facts and circumstances and rival submissions of the parties, I think mere technicality should not come in the way of doing substantial justice. The petitioner is a lady who has been awarded Rs. 2,000/- per month as maintenance amount and admittedly, even that maintenance amount has not been paid to the said lady. It is also a fact which has been noted by the learned Family Court when it passed the order dismissing the misc. case. Prior to that, the court proceeding were hampered and were not running in proper manner and only curtailed hearings were taking place. The petitioner came before this Court in the year 2022 and even after filing of this civil misc. petition more than two years have been elapsed. Therefore, it would be expedient in the interest of justice that the impugned order be set aside and the petitioner is given one more opportunity to prosecute her miscellaneous case.

06. Accordingly, the impugned order dated 18.09.2021 is set aside and the parties are directed to appear before the learned Family Court, which shall take up immediate



steps for restoration of misc. case and try to dispose of the same within next three months from the date of receipt/production of a copy of this order.

07. With the aforesaid observation, the present Civil Misc. Petition stands disposed of.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.07.2024
Transmission Date	NA

