

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.390 of 2023

Saurabh Kumar S/o - Kumar Vibhanand, Resident of Bhutnath Road behind ATM of SBI Housing No. 3RC8 Bahadurpur, P.S. - Agamkuan, District - Patna.

... .. Petitioner/s

Versus

Rajni Kumari Wife of Saurav Kumar Resident at Bhutnath Road behind ATM of SBI Housing No. 3RC8 Bahadurpur, P.S. - Agamkuan, District - Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sadanand Prasad Deo, Adv.
For the Respondent/s	:	Mr. Yogesh Chandra Verma, Sr. Adv. Mr. Braj Bhushan Poddar, Adv.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 13-08-2024

Heard learned counsel for the petitioner as well as learned senior counsel for the respondent.

02. The instant petition has been filed under Section 227 of the Constitution of India for quashing the order dated 15.02.2023 passed by learned Principal Judge, Family Court, Begusarai in Maintenance Case No. 77 of 2020 whereby and whereunder the learned Family Court allowed the *ad-interim* maintenance to the tune of Rs.25,000/- per month to the respondent with further direction to pay Rs.7,500/- as litigation cost. Subsequently, an interlocutory application has been filed in the present case for setting aside order dated 05.10.2023 passed by the learned Family Court, Begusarai whereby and whereunder the learned Family Court directed the petitioner to

pay respondent Rs.7,12,500/- i.e., amount of interim maintenance from the date of filing of application of 15.02.2021.

03. Briefly stated, facts of the case are that petitioner is the husband of the respondent and their marriage was solemnized on 22.06.2018. The marriage ran into rough weathers and a number of cases came to be instituted by the parties. During pendency of the maintenance case, the respondent moved an application dated 15.02.2021 seeking interim maintenance. The learned Family Court ordered the petitioner to make payment of Rs.25,000/- per month in the account of the respondent. The petitioner was further directed to make payment of Rs.7,500/- as litigation cost. This order has been assailed in the present petition.

04. Learned counsel for the petitioner submitted that the whole proceeding before the learned Family Court, Begusarai is without jurisdiction and the impugned order has been passed against the facts and without taking into consideration the circumstances. The respondent has admitted in her cross-examination held on 04.03.2023 in Maintenance Case No. 77 of 2020 that since 28.04.2017 she has been residing at her in-laws place at Patna. So in terms of Section 126 of the

Code of Criminal Procedure the jurisdiction of the maintenance case would be the Family Court, Patna but only to harass the petitioner and to protect her vested interest the respondent has filed the maintenance case in Family Court, Begusarai. Learned counsel further submitted that respondent and her parents are cantankerous litigants. Learned counsel further submitted that altogether 17 cases are being fought between the parties and the petitioner is left with no money to provide interim maintenance amount to the respondent but this fact has not been considered by learned Family Court. The learned Family Court did not further consider the fact that the petitioner truthfully disclosed his income but the petitioner stays in Mumbai where the cost of living is much higher and the petitioner has to maintain not only himself but has also to bear the expenses of his parents and has also to bear the litigation and travelling cost. The learned Family Court did not consider for a moment that the situation is the own creation of the respondent who has created such an atmosphere only in order to torture the petitioner and has refused to discharge her matrimonial obligations. Moreover, the learned Family Court completely overlooked the fact that the respondent herself claimed in her maintenance petition that she needs Rs.15,000/- per month to meet her expenses. Another aspect

missed by the learned Family Court was that the respondent has been staying in the house of her in-laws by capturing its first floor much before the filing of the maintenance petition which has been filed in Begusarai only to harass the petitioner. The respondent has filed cases in three different places i.e., Begusarai, Majhaul and Patna. The learned Family Court did not consider the fact that the respondent is highly educated having degrees of M.Com and B.Ed. It was the petitioner who bore all expenses of the respondent for getting the B.Ed degree. The respondent is a working lady and she is a professional accountant and also works as a part time teacher in a coaching institute. Respondent leads a lavish life as she has handsome independent income. Learned counsel further submitted that due to this reason the respondent did not file the bank statement of previous three years when she filed her affidavit of income and asset liabilities in Maintenance Case No. 77 of 2020 on 05.08.2022. The respondent has not filed the said bank statement despite orders passed on 05.10.2023 by the learned Family Court. The fact was also not considered that the respondent has been filing cases at the drop of hat and what is the source of her funds for fighting all such cases. Thus, the learned counsel submitted that the impugned order is bad in law

as well as on the facts and the same is not sustainable.

05. Learned senior counsel appearing on behalf of the respondent vehemently submitted that there is no infirmity in the impugned order and the same does not require any interference. Learned senior counsel further submitted that the respondent is the wife and she has been forced to resort to litigation by the acts of the petitioner. Learned senior counsel further submitted that the petitioner has admitted that he works as a software engineer and his monthly income is Rs.1,12,000/-. So the order of learned Family Court allowing interim maintenance amount @ Rs.25,000/- per month is quite reasonable. The learned senior counsel further submitted that the petitioner and his family have also filed a number of cases against the respondent and she also has to bear the cost of fighting cases against the petitioner. Learned senior counsel, however, submitted that the respondent is entitled to a matching lifestyle with the petitioner but in the prevailing condition, she has been pushed to the verge of destitution and vagrancy. Learned senior counsel also submitted that though the petitioner is said to be a highly qualified lady, she has no job of her own therefore, any submission in this regard made by the learned counsel for the petitioner is bereft of substantive material.

Learned senior counsel further submitted that moreover, the order challenged before this Court is only an interim order and the learned Family Court will consider all the facts and circumstances while passing the final orders. Since there is no excess of jurisdiction or error apparent in the impugned order, the same needs to be affirmed.

06. Having regard to the rival submissions and claims of the parties, the issue before this Court is whether the interim order of the learned Family Court is proper, legal and justifiable and whether there is any error of jurisdiction in passing the said order. Normally, the Court would not like to go into appreciation of factual matrix in maintenance cases at the time of grant of interim maintenance as the same is required to be considered in the light of material available before it in depth by the learned Principal Judge, Family Court before passing the final orders. So, this Court would not like to venture into the disputed facts of the parties. However, at this stage of passing the order in interim maintenance, the learned Family Court was required to record an unequivocal finding about the income and expenditure of both the parties and could not have passed the orders only on the ground that the petitioner was having monthly income of Rs.1,12,000/-. Prior to allowing the application for interim

maintenance it was incumbent upon the learned Family Court to take into consideration the expenses of the either parties, a duty in which it has failed.

07. Therefore, considering the submissions made on behalf of the petitioner about high cost of living in Mumbai and also about bearing the expenses of his old parents, this Court would like to tinker with the interim maintenance amount and the interim order would stand modified to that extent. Hence, the impugned order is partially modified by reducing the amount of interim maintenance from Rs.25,000/- to Rs.15,000/- per month from the date of the application. It is made clear that since, the order impugned is of transient nature and the same is always subject to modification and other orders, the modification in the impugned order is made with this intent and for disposal of the present petition. Since, the Maintenance Case No. 77 of 2022 has been pending before the learned Family Court for last four years the learned Family Court is requested to proceed in the matter showing urgency and dispose of the same preferably within six months from the date of receipt/production of copy of this order. The petitioner is at liberty to raise all the points before the learned Family Court which shall pass a reasoned and speaking order for

acceptance/rejection of the contention including issue of jurisdiction of the petitioner. The orders passed by the Family Court would also take into account the other pending litigation between the parties and orders passed therein and the parties are directed to bring all such relevant orders to the notice of the learned Principal Judge, Family Court, Begusarai to enable him to pass final orders.

08. With the aforesaid observation, the present petition stands partially allowed and disposed of. The pending interlocutory application also stands disposed of.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	11.07.2024
Uploading Date	14.08.2024
Transmission Date	N/A