

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.595 of 2023

Piyush Prakash Son of Dharmdeo Prasad, Resident of Muhalla- Mulahchak,
Near Devi Mandir, P.O and P.S.- Jahanabad, District- Jahanabad.

... .. Petitioner/s

Versus

1. Smt. Kanishka Kumari Daughter of Brij Nandan Prasad, Resident of Yarpur, Jogia Toli, P.S.- Gardaniagh, Town and District- Patna.
2. Araw Son of Piyush Prakash, Resident of Yarpur, Jogia Toli, P.S.- Gardaniagh, Town and District- Patna.
3. Gungun D/o Piyush Prakash, Resident of Yarpur, Jogia Toli, P.S.- Gardaniagh, Town and District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Dineshwar Mishra, Advocate
For the Respondent/s : None

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

5 13-11-2024 Heard learned counsel for the petitioner. Despite service of notice, on one appears for the respondents.

2. The petitioner is aggrieved by the order dated 17.03.2023 passed by learned Principal Judge, Family Court, Jehanabad in Maintenance Case No. 47 of 2022 whereby and whereunder the learned Principal Judge, Family Court, Jehanabad allowed interim maintenance to the tune of Rs. 8,000/- per month in favour of respondent no.1 and Rs. 4,000/- per month for respondent nos. 2 and 3 apart from litigation cost of Rs. 20,000/-

3. Learned counsel for the petitioner submits that the impugned order was passed *ex parte* and the learned trial court



has not taken into consideration the financial condition of the petitioner. Petitioner is an I.T. Assistant in the District Administration, Jehanabad and it is a contractual job and he earns only Rs. 16813/-. Learned counsel further submits that he has filed an application for setting aside the impugned order but the said application is still pending. Learned counsel further submits that the impugned order has been passed in undue haste by the learned Principal Judge, Family Court, Jehanabad. On 15.03.2023, an application under Section 24 of the Hindu Marriage Act for maintenance *pendente lite* was filed and on 17.03.2023 the case was fixed for 28.03.2023 for adducing evidence. But without recalling the order or without preponing the date, the impugned order has been passed *ex parte*. It is also the fact that the learned Principal Judge, Family Court, Jehanabad was already under orders of transfer. All these facts go on to show that the impugned order is not sustainable.

4. Perused the record.

5. Since the petitioner is aggrieved by the order dated 17.03.2023 which appears to be an *ex parte* order and the application of the petitioner for setting aside the *ex parte* order is still pending, the proper course of action in such matter would be to wait for disposal of pending application. The petitioner



could raise all issues before the learned Principal Judge, Family Court, Jehanabad as the petitioner did not get opportunity for bringing to the notice of the court since the order was passed *ex parte*.

6. Hence, in view of the aforesaid facts and circumstances, the petitioner is directed to approach the learned trial court to raise all his contention and for getting the application filed for setting aside the *ex parte* order, disposed of. The learned Principal Judge, Family Court, Jehanabd is directed to consider the submission of the petitioner and pass reasoned order on the petition filed for setting aside the *ex parte* hearing within a period of one month from the date of receipt/production of a copy of this order.

7. With the aforesaid observations/directions, the instant petition stands disposed of.

(Arun Kumar Jha, J)

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