

(2016) 05 PAT CK 0064

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2843 of 2014 in MA 593 of 2013

Sri Sunil Chandra Singh

APPELLANT

Vs

Smt. Seema Singh

RESPONDENT

Date of Decision : 05-05-2016

Acts Referred:

Citation : (2016) AIR(Patna) 123 : (2017) 1 PLJR 700

Hon'ble Judges : V. Nath, J.

Bench : Single Bench

Advocate : Mr. Subhdeep Das, Advocate, for the Appellant; None, for the Respondent

Final Decision : Disposed Off

Judgement

V. Nath, J. (Oral) - Heard Mr. L.N. Das, learned counsel appearing on behalf of the petitioner and also the sole respondent Ms. Seema Singh who has appeared in-person and has made her submissions.

2. This application under Article 227 of the Constitution of India has been filed praying for quashing the order dated 26.04.2013 passed in Matrimonial Case No.398/2010 whereby the learned court below has enhanced the quantum of interim maintenance from Rs. 10,000/- to 12,000/- per month and allowed the amount of Rs. 20,000/- in lumpsum as admission fee of the daughter of the petitioner and the respondent. During the pendency of this application the interlocutory application (I.A.No.430/2016) has been filed on 15.01.2016 praying for amendment in the main application by incorporating the relief for quashing the order dated 03.01.2015 passed in the aforesaid matrimonial case enhancing the amount of interim maintenance from Rs. 12,000/- to 15,000/- per month.

3. The facts in detail in dispute between the parties need no notice in view of the limited nature of the controversy in the present proceeding. Suffice it to state that the petitioner and the sole respondent are legally married couple having a girl child borne out of their wedlock. The Matrimonial Case No.398/2010 has

been filed by the husband-petitioner for a decree of divorce against the wife-respondent on the ground of cruelty and desertion with further relief for the custody of the daughter. During the pendency of the matrimonial case a petition under Section 24 of the Hindu Marriage Act was filed by the respondent for grant of interim maintenance. The said petition was allowed by order dated 21.02.2011 directing the petitioner to pay total amount of Rs. 10,000/- per month out of which Rs. 8,000/- was for the maintenance of the respondent and the amount of Rs. 2,000/- was for the maintenance of the daughter by way of interim maintenance besides the direction to the petitioner to pay Rs. 6,000/- in lumpsum by way of litigation cost. Subsequently on 14.03.2012 a petition was filed by the respondent under Section 26 of the Hindu Marriage Act praying for payment of Rs. 50,000/- in one lumpsum for the purpose of admission of the daughter in school and further for direction for payment of Rs. 10,000/- for the maintenance of the daughter. It was averred in the petition that the amount which was allowed for maintenance of the child was inadequate in view of the prevailing heavy cost for admission in a good educational institution and the allied expenses therein.

4. The learned court below heard the parties and after taking into notice the cost to be incurred towards proper education and maintenance of the minor daughter aged about 5 years admittedly residing with the mother (respondent), the order has been passed on 26.04.2013 whereby the amount of interim maintenance of Rs. 2,000/- per month earlier granted for the maintenance of the daughter was enhanced to Rs. 4,000/- per month. Besides the petitioner was also directed to deposit Rs. 20,000/- in one lumpsum as admission fee for the daughter. This order has been initially assailed in the present application.

5. Subsequently it appears that the respondent had prayed before the court that though by order dated 26.04.2013 the learned court below had allowed the enhancement of interim maintenance but that was only with regard to the daughter and no order was passed with regard to the enhancement of the amount of maintenance to the respondent which prayer was still pending. The learned court below by order dated 03.01.2015 allowed the prayer of the respondent and enhanced the amount of interim maintenance to be paid to the respondent from Rs. 8,000/- per month to Rs. 11,000/- per month. By filing the interlocutory application (I.A.No.430/2016) the petitioner has prayed to incorporate the relief for quashing this order dated 03.01.2015.

6. It appears that this application was earlier heard by this Court and by order dated 27.01.2016 this Court after taking into notice the stand on behalf of the petitioner expressing the readiness to pay Rs. 12,000/- per month as directed by order dated 26.04.2013, has directed the petitioner to continue to pay the said amount of Rs. 12,000/- till the hearing of this writ application in admission and issued notice to the respondent in admission matter. The petitioner was further directed to deposit the arrears as well as current amount of the interim maintenance till January 2016.

7. After notice the respondent has appeared in-person and has also filed a counter affidavit and the supplementary counter affidavit. The petitioner has filed a reply to the counter affidavit.

8. When this matter was taken up on 11.04.2016, the respondent submitted that the petitioner had not complied the earlier direction and had not deposited the amount of interim maintenance including the arrears up-till-now. However, the matter was adjourned.

9. Mr. Das, learned counsel appearing for the petitioner at the outset has submitted that the entire amount of interim maintenance including the arrears up-to March 2016 has been deposited by the petitioner @ Rs. 12,000/- per month and there is no dues in this regard. The learned counsel for the petitioner has referred to the statement in paragraph-4 of the reply to the counter affidavit wherein the statement has been made that the entire amount of interim maintenance @ Rs. 12,000/- up-to March 2016 has been deposited by the petitioner.

10. Mr. Das, learned counsel for the petitioner has thereafter submitted that the Matrimonial Case No.398/2010 is still pending due to the incalcitrant attitude of the respondent who is interested only in prolonging the litigation by any means. Elaborating his submissions, it has been canvassed that though the hearing in the matrimonial case started on 22.08.2012 but only three witness on behalf of the petitioner could be examined up-till-now due to the reasons attributable directly to the respondent. By referring to the averments made in the interlocutory application (I.A.No.430/2016) the learned counsel for the petitioner has pointed out that the petitioner is facing a large number of litigations at the instance of the respondent which fact demonstrates the attitude of the respondent in harassing the petitioner. It has also been submitted that on 27.01.2016 when the interim order was passed by this Court and at present also it is being reiterated on behalf of the petitioner that the pending proceeding should be directed to be disposed of at the earliest in order to give quietus to the dispute. The learned counsel has also criticized the order dated 03.01.2015 by which the amount of interim maintenance payable to the respondent has been enhanced by Rs. 3,000/- per month, though it has been accepted that the petitioner is not shirking from his liability to pay maintenance for his daughter as earlier directed by the court. The prayer has also been made to allow the amendment petition (I.A.No.430/2016) and incorporate the relief also against the subsequent order dated 03.01.2015.

11. The respondent in reply has categorically taken the stand that she has filed a Maintenance Case No.100/2013 under Section 125 Cr.P.C. against the petitioner and till this case is disposed of finally, the proceeding of matrimonial case should be allowed to remain pending. By referring to the averments made in the counter affidavit and the supplementary counter affidavit the respondent has submitted that she is facing great difficulty in coping with the day to day necessities of her daughter as well as herself and therefore the amount of enhanced maintenance

as directed by the court by order dated 03.01.2015 may not be interfered. Concluding her submission the respondent has laid stress on her plight and has prayed that the Maintenance Case No.100/2013 be directed to be disposed of first and this application be dismissed.

12. After considering the submissions of the parties as well as the earlier order of this Court passed on 27.01.2016, the prayer for amendment as made in I.A.No.430/2016 is allowed and the said interlocutory application is made part of the main application.

13. Though learned counsel for the petitioner and the respondent who has appeared in person have in their own ways highlighted various facets of the matrimonial dispute between the parties, it is seemly, however, to notice that in the present application filed by the husband-petitioner, the challenge is mainly to the order dated 03.01.2015 by which the amount of interim maintenance to be paid to the wife-respondent has been enhanced by Rs. 3000/- per month. Going in flashback, it is evident that by earlier order dated 21.02.2011, the learned court below had allowed the amount of interim maintenance at the rate of Rs. 8000/- per month for the wife-respondent and Rs. 2000/- per month for the minor daughter. Subsequently, by order dated 26.04.2013, the amount of interim maintenance of Rs. 2000/- per month payable to the minor daughter has been enhanced to Rs. 4000/- per month. Again however, by order dated 03.01.2015, the learned court below has enhanced the amount of interim maintenance payable to the wife-respondent by Rs. 3000/-. The learned counsel for the petitioner has taken the stand which has also been noticed in the order dated 27.01.2016 by this court that the petitioner has no objection to the payment of enhanced amount of maintenance for the minor daughter. It would, however, be pertinent to mention that during the course of his submission at present Mr. Das, learned counsel for the petitioner has laid main stress for a direction for early disposal of the matrimonial case itself. The wife-respondent in response has taken a stubborn attitude against the prayer for early disposal of the Matrimonial Case No. 398 of 2010 and has been categorical in her stand that the Maintenance Case No. 100 of 2013 filed by her under Section 125 Cr.P.C. may firstly be directed to be disposed of.

14. It is apparent that the matrimonial case for divorce between the parties is pending since 2010. The matrimonial dispute between the parties has also stemmed into several more litigations. It is also manifest that the respondent has been held to be entitled to the interim maintenance for herself and for her minor daughter and the petitioner has been directed to pay the amount of interim maintenance as directed, though the dispute has also been raised by the respondent regarding irregular payment of the amount of interim maintenance and the arrears thereto.

15. As observed by the Apex Court, though in the context of section 125 Cr.P.C., in *Shail Kumari Devi v. Krishan Bhagwan Pathak*, A.I.R. 2008 S.C. 3006, that "maintenance is a right which accrues to a wife against her husband the minute

the former gets married to the later. It is not only a moral obligation but is also a legal duty cast upon the husband to maintain his wife". The purpose of maintenance therefore is definitely to prevent vagrancy and provide financial support in appropriate cases to the wife. By the provision enshrined in Section 24 of the Hindu Marriage Act, the amplest discretion has been conferred on the court in a matrimonial proceeding to pass appropriate order in this regard. In the present case while passing the order dated 26.04.2013, the learned court below has scrutinised the facts and circumstances as well as the materials on record and thereafter has enhanced the amount of interim maintenance by Rs. 2000/- payable towards the minor daughter. By subsequent order dated 03.01.2015, the learned court below has enhanced the amount of interim maintenance to be payable to the wife-respondent by Rs. 3000/-. Though the submission on behalf of the petitioner has been made questioning the entitlement of the respondent for interim maintenance, this Court finds that in view of the order dated 21.02.2011 holding the respondent and minor daughter to be entitled to the interim maintenance which is not under challenge at present, this issue cannot be gone into at present in absence of assertion of some new fact deserving notice in this regard. So far as the enhancement of the amount of interim maintenance payable to the respondent is concerned, the only substantial plea raised by the petitioner as averred in the interlocutory application (I.A. No. 430 of 2016) is that the petitioner is out of service from March 2014. This plea however does not find support from the averments made in the main application or from the two impugned orders which have been admittedly passed after hearing the petitioner that the petitioner is not continuing in service. No other cogent evidence has been produced on behalf of the petitioner to support this fact. There is also no averment denying other sources of income of the petitioner as alleged by the respondent. Even otherwise also the amount of Rs. 15,000/- per month for the maintenance of two persons does not appear to be excessive or unreasonable in the facts and circumstances of this case. This Court is, therefore, not inclined to interfere with the two impugned orders dated 26.04.2013 and 03.01.2015.

16. But the matter does not end here as the prayer on behalf of the petitioner for early disposal of the matrimonial case cannot be ignored in the facts and circumstances of this case. It will be against the rules of equity, justice and fair play that a proceeding in a matrimonial case be allowed to remain pending for years only because the other side has refused to participate in the proceeding on the specious plea of pendency of another proceeding instituted by him/her pendente lite and putting up a precondition for disposal of the another proceeding first. A long drawn matrimonial case, in all likelihood, generates litigation's and is proved to deepen the agony and the feeling of deprivation which may prove antithetical to the efforts for reconciliation. In the present case, therefore, the stand of the wife-respondent that she would not cooperate in the disposal of the Matrimonial Case No. 398 of 2010 till the disposal of the Maintenance Case No. 100 of 2013 filed by her under Section 125 Cr.P.C. cannot

be countenanced. It also appears from the order dated 29.06.2015 passed by the learned court below, a copy of which has been produced for perusal of this Court, that the same stand and stance by the respondent that she would depose in the matrimonial case only after the disposal of the maintenance case had already been rejected by the learned court below. As such, this Court is of the firm opinion that in the fitness of things, a direction is required to be issued for early disposal of the Matrimonial Case No. 398 of 2010 along with its analogous case in accordance with law.

17. Accordingly, this Court declines the relief as prayed by the petitioner for quashing the two impugned orders dated 26.04.2013 and 03.01.2015 but directs the learned court below to finally dispose of the Matrimonial Case No. 398 of 2010 and analogous Matrimonial Case No. 850 of 2011 by December 2016 subject only to the condition mentioned in the later part of this order. The learned court below is further directed to maintain this time frame even by proceeding in accordance with law and prescribed procedure in this regard if in its judicial opinion there is deliberate and intentional non-cooperation by any of the parties to the proceedings in hearing and disposal of the matters. The learned court below may also consider the desirability for taking up other litigation's between the parties pending before it for hearing along with the Matrimonial case No. 398 of 2010, if so prayed, in accordance with law.

18. It is further directed that the petitioner shall pay the amount of interim maintenance in accordance with the order dated 03.01.2015 at the rate of Rs. 15000/- per month to the respondent and the minor daughter. The amount already paid by the petitioner after the order dated 27.01.2016 of this Court in this regard shall, however, be adjustable. The payment of all the amount of arrears of interim maintenance and the current amount of maintenance as directed shall however be a condition precedent for passing the final order in the Matrimonial Case No. 398 of 2010 filed by the petitioner.

19. The present application is, accordingly, disposed of with the aforesaid directions.