

(2019) 07 PAT CK 0254

In the Patna High Court

Case No : Civil Miscellaneous Jurisdiction No. 409 Of 2019

Vinod Kumar

APPELLANT

Vs

Madhumita

RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 227

Hindu Marriage Act, 1955 — Section 13(i)(ia), 13(i)(ib), 13(i)(1A)(ii)

Citation : (2019) 07 PAT CK 0254

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Sunil Srivastava

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and perused the materials available on record.

2. By way of the present application preferred under Article 227 of the Constitution of India, the petitioner has prayed for setting aside the order dated 04.01.2019 passed by the learned Additional Principal Judge, Family Court, Patna in Matrimonial Case No. 390 of 2013, as contained in Annexure-4 to the present application, by which he has directed the petitioner to pay Rs.75,000/- to the respondent to meet the expenses incurred in the admission of her daughter in Open Minds Birla School, Patna.

3. It is submitted by the learned counsel for the petitioner that the order impugned is bad in law. The respondent herself is a qualified doctor. She is capable to get her daughter admitted in a reputed school and the application filed by her before the Principal Judge, Family Court, Patna was nothing but to coerce the petitioner. He contended that if the impugned order passed by the court below is not set aside, the same would cause great prejudice to the petitioner as he is already paying Rs.5,000/- per month as cost for education of

his minor daughter since 2014 pursuant to an order passed on 10.06.2014 by the court of Additional Principal Judge, Family Court, Patna.

4. On perusal of the materials on record, I find that initially the petitioner had filed a case for decree of divorce by dissolving the marriage solemnized on 06.07.2003 in between the parties vide R.C.S. No. 684A of 2011 under Sections 13(i), (ia), (ib) and (1-A)(ii) of the Hindu Marriage Act, 1955 in the Family Court, Bhopal, Madhya Pradesh.

5. On receipt of the notice, the respondent filed a petition before the Supreme Court vide Transfer Petition (Civil) No. 1309 of 2012 for transfer of the case from the Family Court, Bhopal to Patna, which was allowed, vide order dated 15.04.2013, with a direction to the transferee court to hear and decide the matrimonial case as expeditiously as may be possible with a further direction to the parties concerned to cooperate with the transferee court in disposal of the case.

6. After receipt of the record from the Family Court, Bhopal, the case was re-numbered as Matrimonial Case No. 390 of 2013 in the court of Principal Judge, Family Court, Patna.

7. During pendency of the aforesaid matrimonial case, the respondent filed an application on 10.03.2014 for maintenance stating therein that a daughter born out of the wedlock between the parties is studying in Class-1 in a reputed school at Patna and she is incurring heavy expenses towards her education. The petitioner filed his rejoinder denying the claim of the respondent.

8. After hearing the parties, the learned Principal Judge, Family Court, Patna vide order dated 10.06.2014 directed the petitioner to pay Rs.5,000/- per month to the respondent towards maintenance and education of minor daughter from the date of application.

9. The contention of the petitioner is that since the date of the order dated 10.06.2014 passed by the learned Principal Judge, Family Court, he is complying with the direction given in the order.

10. However, on 19.03.2015, the respondent filed another application wherein she had sought for a direction to be issued by the court to the petitioner to deposit Rs.1,30,000/- for getting their daughter admitted in Open Minds Birla School, Patna. The petitioner filed his rejoinder on 07.04.2015 and contested the matter. He contended that the respondent herself is an MBBS doctor posted in NMCH, Patna and getting handsome salary and is capable enough to get the minor daughter admitted in the School. He contended that his consent was never taken for her admission in the said school and, thus, he cannot be saddled with the expenses incurred over her admission.

11. Having considered the rival submissions made on behalf of the parties, vide impugned order dated 04.01.2019, the learned Additional Principal Judge, Family Court, Patna directed the petitioner to pay Rs.75,000/- out of Rs.1,30,000/-

incurred over admission of the minor daughter in the school to the respondent.

12. On query, learned counsel for the petitioner submitted that the petitioner is an engineer posted at Bhopal in a public sector undertaking (NTPC).

13. Under the facts and circumstances of the case, when the marriage of the petitioner with the respondent is not disputed and the petitioner concedes that the daughter has been born out of the wedlock between the parties and she is living with her mother, I see no reason to interfere with the order, specially when the petitioner is a qualified engineer and is well placed. It is true that the petitioner has taken a plea that the respondent herself is a qualified doctor and is employed also, but only because wife is employed and is earning, the husband cannot shirk his responsibility in upbringing of his minor daughter. The respondent has produced cogent evidence before the court below that she had spent Rs.1,30,000/- for getting the minor daughter admitted in Open Minds Birla School, Patna. The petitioner has been directed to pay only part of the amount spent over admission of his daughter. The petitioner, being employed as an engineer in NTPC, has sufficient means to support his daughter. To provide good education to the child is not the responsibility of the mother alone. The father is equally responsible to provide the daughter the best possible education. The plea that the mother with whom the daughter is living is having adequate income to bear the expenses of her education would not relieve the petitioner of his legal, moral and social obligation to make his contribution towards the attainment of better education of his daughter.

14. In that view of the matter, I see no reason to interfere with the order impugned in supervisory jurisdiction under Article 227 of the Constitution of India. The application is dismissed.