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Court : Patna

Decided On : Aug-22-2003

Judge : R.S. Dhavan, C.J. and S.K. Singh, J.

Appeal No. : L.P.A. No. 749 of 2003

Appellant : Jitendra Kumar @ Jitendra Dhiman

Respondent : State of Bihar and ors.

Disposition : Appeal dismissed

Judgement :

1. The matrimonial case was filed by Jitendra Kumar alias Jitendra Dhiman against his wife. This was numbered as Matrimonial Case No. 83 of 1995 and is pending before the Principal Judge, Family Court, Patna.
2. On 13-5-2002, the Principal Judge, Family Court, Patna directed that Jitendra Dhiman will pay Rs. 2,000/- per month to the respondent Usha Devi by 10th of each succeeding month, i.e., to say till June, 2002. In addition Rs. 5,000/- was granted as interim litigation cost. None of these amounts was deposited.
3. Instead, the appellant filed a writ petition before the High Court being C.W. J.C. No. 11250 of 2002; Jitendra Kumar alias Jitendra Dhiman v. State of Bihar and Ors. While the writ petition remained pending since when it was filed on 3rd October, 2002, which inevitably would be the situation in the High Court which

works under pressure with less capacity on the Benches the advantage was entirely of the petitioner. Ultimately, when the matter came up before the learned Judge, he passed the following order:

'The order, which was passed is very just.'

4. This is actually a hint to the petitioner-appellant to fall in line with the order of the Family Court and pay the maintenance so ordered to his wife from whom he seeks a divorce and in addition to pay the ad interim cost of Rs. 5000/-.

5. The appellant is fortunatus that the Principal Judge of the Family Court required him to pay the payment following his order by 10th of the month subsequent to his order. The Family Court could have required the petitioner to pay maintenance at any time after filing of the suit by the petitioner himself.

6. Now the petitioner appellant files a letters patent appeal in the High Court to say that the learned Judge has erred in not giving relief on the writ petition.

7. The plain question is what exactly is the wife of the petitioner to do till the matter is sorted out; divorce having been sought by the appellant. In today's time an award of maintenance of Rs. 2,000/- is not reasonable.

8. Plainly, the petitioner-appellant is purchasing time in litigation. This is an ad interim maintenance. This Court is not going to permit the petitioner appellant to enter in to some sort of panchayat to bargain on the maintenance, which has been ordered. In so far as the maintenance is concerned, as was ordered by the Family Court by order dated 13th May, 2002, the appellant shall pay maintenance including the arrears. The maintenance will begin from 10th September, 2003 and, thereafter, continue as the Principal Judge, Family Court had ordered. In so far as the arrears are concerned, it may be deposited in these instalments, which will be fixed by the Principal Judge, Family Court to whom this order is being marked down, One of the instalments will also contain the directions to deposit Rs. 5,000/- which had been awarded.

9. In case, the appellant commits a default in deposit of the amount as this Court so ordered then a decree of execution will be set in motion and satisfied as the law

so warrants.

Dismissed.

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