

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.490 of 2024
In
Miscellaneous Jurisdiction Case No.1804 of 2023

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Neha Agrawal W/o Sumit Agrawal, Daughter of Arun Khemka Resident of 32 Baranashi Ghosh Street, P.S.- Girish Park, Kolkata (West Bengal).

... .. Appellant/s

Versus

Sumit Agrawal Son of Late Ashok Agrawal Resident of 202, Amba Residency, Boring Canal Road, Patna, presently residing at 102 Chandra Residency, Boring Road, P.S.- Sri Krishnapuri, District- Patna.

... .. Respondent/s

with

CIVIL MISCELLANEOUS JURISDICTION No. 451 of 2019

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Neha Agrawal @ Neha Khemka wife of Sumit Agrawal, Daughter of Arun Kumar Khemka, Currently Residing at 32, Baranashi Ghosh Street, P.S.- Girish Park, District- Kolkata, West Bengal, PIN- 700007

... .. Petitioner/s

Versus

Sumit Agrawal Son of Late Ashok Agrawal, Resident of 202-203, Amba Residency, East Boring Canal Road, P.S.- Buddha Colony, Patna.

... .. Respondent/s

with

Miscellaneous Jurisdiction Case No. 3439 of 2024

In

CIVIL MISCELLANEOUS JURISDICTION No.451 of 2019

=====

Neha Agrawal D/O Arun Kumar Khemka currently residing at 32, Baranashi Ghosh Street, P.S.- Girish Park, Post- Burrabazar, District - Kolkata-700007.

... .. Petitioner/s

Versus

Sumit Agrawal s/o Late Ashok Agrawal R/O. 202-203 Amba Residency, East Boring Canal Road, P.S. Buddha Colony, Patna- 800001.

... .. Opposite Party/s

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Appearance :

(In Letters Patent Appeal No. 490 of 2024)

For the Appellant/s : Mr. Satyabir Bharti, Amicus Curiae
Ms. Kanupriya, Advocate
Mr. Abhishek Anand, Advocate

For the Respondent/s : Mr. Ranjeet Kumar, Advocate
Mr. Kanishka Kaustubh, Advocate
Mr. Rajesh Prakash, Advocate
Ms. Lakshmi Kumari, Advocate

(In CIVIL MISCELLANEOUS JURISDICTION No. 451 of 2019)



For the Petitioner/s : Mr. Satyabir Bharti, Amicus Curiae
Ms. Kanupriya, Advocate
Mr. Abhishek Anand, Advocate
For the Respondent/s : Mr. Ranjeet Kumar, Advocate
Mr. Kanishka Kaustubh, Advocate
Mr. Rajesh Prakash, Advocate
Ms. Lakshmi Kumari, Advocate
(In Miscellaneous Jurisdiction Case No. 3439 of 2024)
For the Petitioner/s : Mr.
For the Opposite Party/s : Mr.

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**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 29-11-2024

We were concerned with an appeal from an order in a MJC filed in C.Misc. No. 269 of 2021.

2. The appellant and the respondent were married on 07.11.2014 under the Special Marriage Act, 1954. On differences arising between the couple, the husband, who is the respondent herein, filed Matrimonial Divorce Suit No. 1044 of 2016. A written statement was also filed by the appellant herein, the wife, in October, 2017.

3. In the C. Misc Case, the petitioner-husband was concerned with the delay in disposal of the divorce case. The wife, who appeared as the respondent, was concerned more with the pending petitions before the Principal Judge, Family Court, which had to be considered, before disposal of the main case. It was also brought to the notice of the Court considering the C. Misc Case that a Miscellaneous Case has already been initiated



in respect of the husband, under Section 340 of the Code of Criminal Procedure, 1973 (for brevity, Cr.P.C), on an application filed by the wife.

4. The learned Single Judge, by order dated 03.12.2021, in CWJC No.269 of 2021, found that both the parties desired speedy disposal of the case, but at the same time, the disposal of the interlocutory applications filed by the respondent, was also necessary to meet the ends of justice. It was directed that, the Principal Judge, Family Court, Patna, would take every endeavor to dispose of the divorce case, as expeditiously as possible, subject to any legal or procedural impediment. So far as the interlocutory applications filed by the respondent, it was found that they have not been affidavited on oath and hence, no further observation was made.

5. The husband, later, filed an MJC in the C.Misc Case on the ground that the wife did not produce her witnesses for examination for the last five years. The learned Single Judge noticed, by an order dated 01.03.2024, that the earlier order dated 03.12.2021 directed disposal of the divorce case expeditiously. It was further directed that the defendant wife would be given an opportunity, by way of three dates, to conclude her evidence; since the plaintiff's evidence was



already concluded. There was also a direction to comply, within a period of three months. A report of the Court below about payment of maintenance amount was also called for, to be placed within a period of three weeks.

6. The matter was again taken up on 01.05.2024. The wife, who appeared through video conferencing, submitted that *ad interim* maintenance was not being paid and the learned Counsel for the husband undertook that whatever dues are to be paid, will be paid within a period of 15 days. Again, the submission of the wife, regarding the application filed under Section 340 of the Cr.P.C., was noticed. The Principal Judge, Family Court, Patna, was directed to ensure that the remaining dues of *ad interim* maintenance be paid to the opposite party and it was also directed that the application under Section 340 of the Cr.P.C. would be taken up expeditiously and the earlier order dated 01.03.2024, would also be complied with.

7. Before us, in the appeal, we appointed an *Amicus Curiae*, learned Counsel Sri Satyabir Bharti, for the appellant-wife, who was appearing in-person. We also heard Sri Ranjit Kumar, learned Counsel for the respondent-husband. Despite the objection raised regarding the sustainability of an appeal, we were of the opinion that there should be a quietus insofar as the



matrimonial dispute between the parties. The learned Counsel for the respondent fairly agrees to such a measure being undertaken by this Court.

8. It was pointed out to us that a C. Misc Case No. 451 of 2019 also is pending before the learned Single Judge having roster, against the award of maintenance; at the rate of Rs. 50,000/- per month. The wife has filed the above C. Misc Case challenging the order and seeking an enhancement to Rs. 3,50,000/-, on the ground that the petitioner's income is much more than that asserted by him. It was also pointed out that three witnesses were examined before the Family Court, in the divorce case, who were discharged and the petitioner did not have an any opportunity to cross-examine them. An application was filed for recall of the witnesses, which is also pending before the Additional Family Court.

9. The learned Counsel for the respondent-husband on the other hand points out that P.Ws. No.-1, 2 and 3, on behalf of the petitioner, were examined before the Family Court, respectively on 04.05.2019, 28.05.2019 and 15.12.2021. It was only because of the lethargy displayed by the respondent that they were not cross-examined, in which circumstance, the witnesses were discharged. As of now, the learned Counsel for



the respondent undertakes that they will be produced for cross-examination, as and when required. The appellant undertakes to produce them on the dates directed by the Additional Family Court.

10. Insofar as the application under Section 340 of the Cr.P.C., it is brought to our notice that already the Family Court has initiated proceedings as Cr. Misc Case No. 1 of 2019. Definitely, the same has to be taken to its logical conclusion by reference to a Jurisdictional Magistrate, if necessary, on orders of the Family Court or by closing it.

11. We also called for the Judges papers of C. Misc no. 451 of 2019, wherein the wife had claimed for enhancement of maintenance amount.

12. We see that on 17.10.2019, from the records of the C. Misc Case that a learned Single Judge had directed the Income Tax returns for the relevant periods to be furnished, which was not done. Again, an order was passed on 21.11.2019, reiterating the order of 17.10.2019. The petitioner did not even then file the returns and by order dated 01.08.2024, again an order was passed directing furnishing of up to date Income Tax returns. Admittedly, the returns have not been filed till date.

13. The learned Counsel for the petitioner-husband



points out that he had filed an application as earlier as in 2019 itself, in the C.Misc Case seeking to recall the order, of production of returns. The petitioner-husband also sought for production of the Income Tax returns in a sealed cover, for perusal of the Court only. The said application has not been considered till date is the submission.

14. The learned Counsel for the respondent-husband, as of now undertakes that, the income returns from the financial year in which the divorce case was filed, would be produced within ten days. The learned Counsel for the respondent-husband also submits that, in one financial year, when his father died, his income was much more, for reason of his having inherited from his father; which definitely has to be reckoned while considering the income of the husband for the purpose of awarding maintenance to the wife.

15. We request the learned Single Judge to expeditiously consider the matter and if possible ensure that an order is passed in the winter session itself, in C. Misc Case.

16. We had called for a report from the learned Additional Principal Judge, Family Court, Patna as to the payment of maintenance. A report has been placed before this Court, in which it has been stated that the interim maintenance



has been paid up to May, 2024. The learned Counsel for the respondent-husband submits that interim maintenance has been paid up to date, the receipts of which will be produced before the learned Single Judge. We leave the issue of payment of interim-maintenance as directed by the Family Court to be considered by the learned Single Judge before whom is placed the C. Misc Case.

17. In the context of the above facts noticed, we are of the opinion that the appeal can be disposed of with the following directions:

(i) As undertaken by the husband, the Income Tax returns from the financial year 2015-16 shall be produced in C. Misc. No. 451 of 2019, where he is the respondent, within a period of ten days from today. The learned Single Judge would also be entitled to look into whether the interim maintenance as already ordered has been paid up to date and issue directions to that end.

(ii) Insofar as the divorce case is concerned, the husband's undertaking that his witnesses will be produced is recorded. The



husband shall file a schedule of dates for appearance of the witnesses, on any date, commencing from the first week of January, 2025, with P.Ws. No. 1, 2 and 3 appearing within ten days of each. The said schedule shall be filed before the Additional Family Court on or before 16.12.2024, on which date, the divorce case shall be posted peremptorily, by the Additional Family Court. Both the parties or their Counsel shall be present before Court. Before the learned Family Court, the respondent-wife shall also be heard insofar as her convenience with reference to the dates on which P.Ws. No. 1 to 3 are to be cross-examined and suitable adjustments shall be made; but however, ensuring that all the three witnesses are cross-examined on or before February, 2025. The application before the learned Family Court for recall of the witnesses will stand disposed of as per our directions hereinabove.

(iii) Insofar as the application under



Section 340 of the Cr.P.C., the Additional Family Court, Patna, shall ensure that appropriate proceedings are taken, after hearing both the parties, if necessary, transmitting the case to the Jurisdictional Magistrate on satisfaction of the Additional Family Court.

(iv) After the cross-examination of P.Ws. No. 1, 2 and 3, the wife, opposite party in the divorce case shall also produce a schedule of witnesses to be examined, before the Additional Family Court, Patna, on any date on the first week of February, 2025 as fixed by the Additional Family Court. After hearing both the parties, and ascertaining the convenience of the husband the Additional Family Court shall fix a schedule of examination of witnesses of the opposite party, which shall be scrupulously complied with by both the parties.

18. With the above observations and directions, we dispose of the present appeal and we make it clear that once the



application under Section 340 of the Cr.P.C., is disposed off and if a criminal case is directed to be registered by the Additional Family Court, then necessarily, the divorce case shall be disposed of in accordance with our directions hereinabove, without waiting for conclusion of the criminal case.

19. The contempt case, as of now, stands closed. If the Income Tax returns are not filed in accordance with the undertaking made herein, it shall stand restored before us, on an application filed by the appellant-wife.

20. We place on record our appreciation for the assistance rendered by the *Amicus Curiae*.

21. LPA No. 490 of 2024 is disposed off. CWJC No.451 of 2019 and MJC No. 3439 of 2024 are directed to be posted before the learned Single Judge having roster.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

aditya/sharun

AFR/NAFR	
CAV DATE	
Uploading Date	04.12.2024.
Transmission Date	

