

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.451 of 2019**

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

Appearance :

For the Petitioner/s : Mr.Neha Agrawal (In Person)
For the Respondent/s : Mr.Ranjeet Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT**

Date : 22-05-2025

The present civil miscellaneous petition has been filed seeking the following reliefs:-

“(I) For modifying the order dated 26.05.2018 passed by learned Additional Principal Judge, Family Court, Patna in Matrimonial Case No. 1044 of 2016 to the extent it grants ad-interim pendente lite alimony and litigation cost to the petitioner.

(II) For quashing the order dated 05.11.2018 passed by the learned Additional Principal Judge, Family Court, Patna in the aforesaid matrimonial case whereby and whereunder the learned trial court has rejected the application filed by the petitioner under Section 151 of the Code of Civil Procedure filed for reviewing the Order dated 26.05.2018.”

02. Briefly stated, facts of the case, as it appears from the record, are that the respondent has filed a Matrimonial



(Divorce) Case No. 1044 of 2016 under Section 27 of the Special Marriage Act, 1954 before the Family Court at Patna seeking dissolution of his marriage with the petitioner. The petition for dissolution of marriage was filed on the ground of desertion and cruelty. The opposite party/petitioner appeared and filed a written statement denying the claim of the petitioner/respondent. During pendency of the petition for dissolution of marriage, the petitioner filed an application dated 22.09.2017 under Section 36 of the Special Marriage Act seeking direction to the respondent to pay a sum of Rs.3,50,000/- per month as interim maintenance and Rs.1,50,000/- as litigation cost to the petitioner. The respondent opposed the contention of the petitioner by filing rejoinder to the applications. The learned Additional District Judge, Family Court, Patna vide order dated 26.05.2018 on the application dated 22.09.2017 allowed interim maintenance amount of Rs.50,000/- per month to the petitioner and also directed the respondent to pay Rs.50,000/- to the petitioner as litigation cost. The petitioner filed an application dated 23.07.2018 under Section 151 of the Code of Civil Procedure (hereinafter “the Code”) for calling the income tax return of the respondent starting from the year 2014-15 and also seeking the



enhancement of the alimony *pendente lite* from the date of application. The petition filed under Section 151 of the Code was rejected by the learned Additional District Judge, Family Court, Patna vide order dated 05.11.2018 holding that the consideration of the application at the stage was not proper and when the matter would be fixed for evidence and the parties were able to bring evidence on this point, the petitioner could move appropriate application which would be considered on its merits. Being aggrieved by these two orders of the learned Additional District Judge, Family Court, Patna, the petitioner has preferred the instant civil miscellaneous petition.

03. The petitioner who appeared in person submitted at the outset that the order of the learned trial court is improper, illegal and passed without application of judicial mind. The petitioner further assailed the orders on the ground that the learned trial court has not considered the material available before it and misconstrued the documents. Learned trial court failed to appreciate that respondent has been earning an amount of Rs. 1.64 crore per annum as shown in his income tax return for financial year 2014-15 and the learned trial court went on to grant interim maintenance to the tune of Rs. 50,000/- which is grossly insufficient and is not fair. The learned trial court also



failed to appreciate the fact that in a matrimonial proceeding, the burden of proof of income is on the husband in the light of Section 106 of the Evidence Act as the income is especially within the knowledge of the husband and if the husband fails to prove the same, then an adverse inference should have been drawn against him. If the husband did not produce any document to revert the claim of the wife regarding the income, than preponderance of the probabilities would lie in the favour of the wife considering the income of the husband. Thus, the learned trial court ought to have awarded maintenance to the petitioner in terms of the income claimed by the petitioner and not on the income admitted by the respondent. The petitioner is also entitled to receive traveling expenses in terms of orders of the Hon'ble Supreme Court in Transfer Petition(s) (Civil) No.(s) 000943 of 2017. The maintenance amount is so meager that it would not even remotely help the petitioner to meet her day to day needs and the litigation cost and would not help the petitioner to contest the present case effectively but the learned trial court did not consider these facts at all. Petitioner further submitted that she, being a destitute and dependent on her parents to fulfill her day to day needs, has made out a case to receive her claimed maintenance amount from the



husband/respondent. The petitioner further submitted that the learned trial court has not considered the fact that respondent has furnished wrong information in his divorce petition. The learned trial court also failed to take the fact into consideration that the respondent failed to produce his income tax return to substantiate his claim and the respondent also refused to file affidavit in support of his income. The learned trial court has also failed to take into consideration the credit card statement of the respondent which shows the annual income of the respondent is much higher than Rs.30 lakh. All these facts were not considered by the learned trial court. The income of the respondent was at much higher side prior to his marriage and it appears it drastically fell down within a year of his marriage but this fact was not considered by the learned trial court while considering the prayer for interim maintenance. The learned trial court ought to have called for the income tax return of the respondent from the year 2014-15 onwards but it did not call for the income tax returns and thus has passed orders without having sufficient material before it. The petitioner further submitted that the principles laid down in the recent case of ***Rajnesh Vs. Neha & Anr.*** reported in ***2021 2 SCC 324*** needs to be considered by this court. The petitioner next submitted that



since the impugned orders are not based on any substantive material, the impugned orders could not be sustained.

04. Learned counsel for the respondent submitted that there is no infirmity in the impugned orders and the present civil miscellaneous petition is entirely misconceived. The learned counsel for the respondent further submitted that the marriage has been solemnized on 07.11.2014 and within two years of the marriage, on 13.09.2016 the respondent was forced to file his application for dissolution of marriage vide Matrimonial Case No. 1044 of 2016. Learned counsel further submitted that pursuant to the order dated 26.05.2018 the respondent has been making payment of interim maintenance amount of Rs.50,000/- per month to the petitioner. Apart from that, the respondent has also been making payment of Rs.20,000/- per month to the petitioner under a proceeding under Section 125 of the Cr.P.C. and Rs. 30,000/- per month in a proceeding under Protection of Women from Domestic Violence Act, 2005. In this manner, the petitioner has been getting an amount of Rs. 1 lakh per month from this respondent. The petitioner is herself a qualified lady with professional education and she can take care of herself. The petitioner should not be allowed to extort money from the respondent and only one maintenance amount ought to be paid



to the petitioner. The petitioner, by all means, wants to extract money from the respondent. Earlier the petitioner was engaged to marry with some other person and she continued the litigation with the said person even after solemnizing marriage with this petitioner and ended the litigation after handsome settlement.

Learned counsel further submitted that from bare perusal of the impugned orders it would be apparent that there is no infirmity in the said orders. The learned trial court, on the basis of the material available on record, awarded the interim maintenance amount of Rs.50,000/- to the petitioner and this Court under Article 227 of the Constitution of India is not supposed to go into the appreciation of facts. There is no excess of jurisdiction in passing the impugned orders by the learned trial court which was competent to pass the orders challenged before this Court. So no ground is made out for interference in the impugned order. The learned counsel further submitted that pursuant to the orders of the Hon'ble Division Bench in L.P.A. No. 490 of 2024 dated 29.11.2024 the respondent has filed income tax returns from the financial year 2015-2016 till date. The learned counsel further submitted that the learned Division Bench has further ordered for expeditious disposal of the matrimonial case by directing the parties to produce their



witnesses in time bound manner but the petitioner is not allowing the matrimonial case to be disposed of. The learned counsel further submitted that the marriage between the parties is irretrievably broken down and for this reason expeditious disposal of the matrimonial case is in the interest of both the parties.

Learned counsel referred to the decision of the Hon'ble Supreme Court in the case of *N. Anantha Reddy vs Anshu Kathuria* reported in *2013 (15) SCC 534* to stress that review of the impugned order is not permissible by this Court as the jurisdiction is extremely limited and unless there is mistake apparent on the face of the record, the order should not be reviewed. Review cannot be an appeal in disguise. On similar proposition, the learned counsel referred to another decision of the Hon'ble Supreme Court in the case of *Parsion Devi and Ors. Vs. Sumitri Devi and Ors.* reported in *(1997)8 SCC 715*. Thus, learned counsel submitted that the impugned orders are proper and correct and hence the same should not be interfered with by this Court in a proceeding under Article 227 of the Constitution of India.

05. I have given my thoughtful consideration to the rival submission of the parties and perused the record.



06. The short issue involved in the present *lis* is whether the learned trial court committed any error of jurisdiction in passing the impugned orders dated 26.05.2018 and 05.11.2018.

The main grievance of the petitioner as is reflected from the voluminous pleadings brought on record by the petitioner and also in response by the other side could not obscure the fact that the dispute lies within a narrow compass and the quantum of interim maintenance allowed by the learned Additional District Judge, Family Court, Patna in Matrimonial Case No. 1044 of 2016 is under challenge.

07. The power and jurisdiction under Article 227 has been conferred on this Court for superintendence over all courts, tribunals throughout its territory and the said power is to keep the courts and tribunals within their bounds and to see that they do not exceed their jurisdiction and this power is to be used very sparingly and in order to promote the cause of justice and not to thwart the same. Under its superintendence power, this Court would not look into the disputed question of facts or re-appreciate the facts to arrive at a different finding than the trial court. Even the mere erroneous orders are not to be interfered with in its supervisory jurisdiction under Article 227 of the



Constitution.

The power of jurisdiction of this Court under Article 227 has been discussed time and again by the Hon'ble Supreme Court. In the case of *Surya Dev Rai vs. Ram Chander Rai* reported in **(2003) 6 SCC 675**, the Hon'ble Supreme Court held that supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

08. The Hon'ble Supreme Court in the case of *Jai Singh & Ors. Vs. M.C.D. & Anr.* reported in **(2010) 9 SCC 385** observed that the High Courts cannot act like “bull in China shop” and the exercise of jurisdiction must be within the well recognized constraints. Unless there is some perversity apparent on face of record or there is any error of jurisdiction requiring any interference by this Court, this Court would be most reluctant to interfere with any interlocutory order passed by the



learned trial court.

09. The Hon'ble Supreme Court in the case of ***Sadhana Lodh vs. National Insurance Company Ltd. & Anr.*** reported in ***AIR 2003 SC 1561*** has held clearly held as follows:-

"The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an Appellate Court or the Tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or re-weigh the evidence upon which the inferior court or Tribunal purports to have passed the order or to correct errors of law in the decision."

10. The Hon'ble Supreme Court in the case of ***Municipal Corporation of Greater Mumbai and Ors. vs. Vivek V. Gawde*** reported in ***2024 SCC OnLine SC3722*** has held in para 16 quoting para 85 and 86 of the case of ***Rajendra Diwan Vs. Pradeep Kumar Ranibala*** reported in ***(2019) 20 SCC 143*** as follows:

" 16."85. The power of superintendence conferred by Article 227 is, however, supervisory and not appellate. It is settled law that this power of judicial superintendence must be exercised sparingly, to keep subordinate courts and tribunals within the limits of their authority. When a Tribunal has acted within its jurisdiction, the



High Court does not interfere in exercise of its extraordinary writ jurisdiction unless there is grave miscarriage of justice or flagrant violation of law. Jurisdiction under Article 227 cannot be exercised 'in the cloak of an appeal in disguise'. 86. In exercise of its extraordinary power of superintendence and/or judicial review under Articles 226 and 227 of the Constitution of India, the High Courts restrict interference to cases of patent error of law which go to the root of the decision; perversity; arbitrariness and/or unreasonableness; violation of principles of natural justice, lack of jurisdiction and usurpation of powers. The High Court does not re-assess or re-analyse the evidence and/or materials on record....The writ jurisdiction of the High Court cannot be converted into an alternative appellate forum, just because there is no other provision of appeal in the eye of the law."

(emphasis supplied)

11. Thus, in this background of legal position, the matter needs to be examined. Perusal of the impugned orders show the learned trial court proceeded on the basis of material before it and has specifically noted that neither of the parties produced the documents in their support and vide order dated 26.05.2018 the learned trial court allowed the interim maintenance amount of Rs.50,000/- on the basis of admitted income of the respondent stated to be Rs. 30 lakh per annum and Rs. 50,000/- as litigation cost to the petitioner. If the petitioner failed to produce documents in support of her contention, she cannot fault the order of the learned trial court for not allowing her interim maintenance amount to the tune of



Rs.3,50,000/- per month and Rs.15,00,000/- as litigation cost. So far as order dated 05.11.2018 is concerned, the said order has been passed on prayer of the petitioner seeking direction by the learned trial court to the respondent to produce his income tax returns for the year 2014-15 and enhance the amount of interim maintenance. The learned trial court has noted this fact that during the hearing of petition filed by the petitioner seeking interim maintenance, no such prayer was made. The learned trial court has further noted that if such applications are entertained at the stage when the matter was pending for settlement of issues, the trial would unduly get hampered. The learned trial court has further observed that when the matter reaches at the stage of evidence and the petitioner seeks production of income tax return of the respondent, the Court would pass appropriate orders and at that time, the petitioner would be at liberty to move appropriate application.

12. Admittedly, the petitioner has been allowed interim maintenance of Rs. 50,000/- per month by the Court of Additional Principal Judge in Matrimonial Case No. 1044 of 2016, Rs. 20,000 as interim maintenance amount by the Court of learned Family Court, Calcutta under a proceeding under Section 125 of the Cr.P.C. and Rs.30,000/- per month in a



proceeding under Protection of Women from Domestic Violence Act, 2005. Thus, the petitioner has been granted interim maintenance amount of Rs. 1 lakh per month by different Court.

13. The Hon'ble Supreme Court in the case of **Rajnish** (supra), considering the claim of maintenance under different statutes, held as under:-

“It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the D.V. Act and Section 125 of the Cr.P.C., or under H.M.A. It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/family court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.”

Therefore it is incumbent upon the Court which is passing the subsequent order to take into consideration any sort of maintenance allowed by the Court previously and it is also the duty of the parties to bring to the notice of such Courts the orders passed previously.



14. I do not find any infirmity even in the order dated 05.11.2018 as reasoning adopted by the learned trial court is proper and justified. Perusal of the impugned orders do not show any perversity so as to require interference by this Court.

15. So far as, the judgments cited by the learned counsel for the respondent are concerned, they are not relevant for the purpose of disposal of the present petition as they pertain to review of orders by the Court and are not concerned with the jurisdictional powers of this Court under Article 227.

16. Since by order of Coordinate Bench of this Court as well as the Hon'ble L.P.A. Bench, the income tax returns from the Financial Year 2015-16 onwards have already been brought on record, it would be proper to direct the petitioner to approach the learned trial court seeking modification in the order granting interim maintenance to the petitioner as under Article 227 of the Constitution of India, this Court would not enter into the disputed questions of facts and fix the quantum of maintenance or change it or modify it.

17. In the light of the aforesaid discussion, I am of the considered opinion that the impugned orders need no interference by this Court and the said impugned orders dated 26.05.2018 and 05.11.2018 are affirmed.



18. However, if the petitioner moves before the learned trial court seeking modification in the order dated 26.05.2018 in the light of the documents brought before this Court by the parties, the learned trial court would duly consider the submission of the parties and pass appropriate orders strictly in accordance with law. At the same time, the learned trial court is directed to take note of the order dated 29.11.2024 by the Hon'ble Division Bench in L.P.A. No. 490 of 2024 and try to dispose of the Matrimonial Case No. 1044 of 2016 at the earliest and any party obstructing the disposal would be dealt by the learned trial court with stern hand.

19. Accordingly, the present petition stands dismissed.

20. Interlocutory Application, if any, stands disposed of.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	NAFR
CAV DATE	18.03.2025
Uploading Date	23.05.2025
Transmission Date	N/A

