

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.170 of 2023**

Pinki Kumari W/o Rajiv Kumar, D/o- Sri Surendra Prasad Sinha Resident of Village- Bhabhua, Ward no. 3, (North Patel Chowk, P.S.- Bhabhua, District- Kaimur at present R/o Vikash Nagar Colony, Road No.-1, Kumhrar, P.O.- Mahendru, P.S.- Alamganj, Distt.- Patna.

... .. Petitioner/s

Versus

Rajiv Kumar S/o- Sri Ramashray Prasad Resident of Village- Bhabhua, Ward no. 3, (North Patel Chowk, P.S.- Bhabhua, District- Kaimur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Baban Kumar, Advocate
For the Respondent/s	:	Mrs. Vagisha Pragya Vacaknavi, Advocate
		Ms. Ankita Roy, Advocate
		Mr. Ashutosh Kr. Pandey, Advocate

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

Date : 20-08-2024

Heard learned counsel for the parties and I intend to dispose of the petition at the stage of admission itself.

2. The present petition has been filed under Section 227 of the Constitution of India against the order dated 19.11.2022 passed by the learned Principal Judge, Family Court, Kaimur at Bhabua in Matrimonial Case No. 11 of 2016 whereby and whereunder the learned Family Court rejected the petition dated 06.03.2021 filed by the petitioner wife for enhancement of interim maintenance amount from Rs.11,000/- to Rs. 45,000/-.

3. Learned counsel for the petitioner submits that petitioner is opposite party in Matrimonial Case No. 11 of 2016 which has been filed by the respondent under Section 13(1A) of



the Hindu Marriage Act for dissolution of marriage. During pendency of the Matrimonial Case, the learned Family Court passed an order for interim maintenance @ Rs.11,000/- per month in favour of the petitioner. Thereafter, an application dated 06.03.2021 has been filed for enhancement of interim maintenance amount. However, the learned Family Court disposed of the said petition after more than a year by passing the impugned order dated 19.11.2022 with observation that as the record was pending of final arguments after closure of evidence of both sides, it was not proper to pass any order of enhancement of interim maintenance. The learned counsel further submits that the impugned order is not sustainable as it has not taken into consideration the fact that the respondent took time of eight months in filing rejoinder to the application for enhancement of interim maintenance amount and the learned Family Court ought to have passed orders on merit and could not have simply disposed of the matter saying that the matter was at the stage of final arguments. Learned counsel further submits that the husband of the respondent is a Senior Manager in his organization and earns Rs.1,50,000/- per month and the learned Family Court ought to have taken this fact into consideration. Learned counsel further submits that the



petitioner has also filed the petitioner under Section 9 of Hindu Marriage Act and she wants to stay with respondent but the respondent has not shown any interest and has rather filed a petition for dissolution of marriage. Thus, learned counsel submits that the impugned order needs interference and the same be set aside and the learned trial court may be directed to consider the petition on merit regarding enhancement of interim maintenance amount.

4. Learned counsel for the respondent opposes the submission made on behalf of the petitioner. Learned counsel submits that respondent has filed the case for dissolution of marriage and after closure of evidence of both sides, the matter has been coming up for final arguments. During pendency of the matrimonial case, interim maintenance was awarded to the petitioner and whenever final order is passed by the learned Family Court in the matrimonial case the concern of the petitioner could be addressed in such final order. The learned counsel further submits that no maintenance case has been filed by the petitioner and in the matrimonial case of the respondent, the orders has been passed and if the matter has been at its fag end the learned Family Court rightly refused to pass any order for enhancement of interim maintenance amount and disposed



of the petition of the petitioner. Hence, there is no need for interfering with the impugned order and the same needs to be affirmed.

5. Having regard to the rival submission of the parties in the light of facts and circumstances of the case, one thing which is very much apparent is that the petitioner is not interested in the final disposal of the matrimonial case for reasons best known to her. Admittedly, the petitioner has not filed any case for maintenance against the respondent and it was the case of the respondent in which interim maintenance was allowed to the petitioner. The learned Family Court while passing the impugned order has taken note of the fact that the evidence of the both sides has been closed and matter has been coming up for final arguments of the parties. In such a situation the primary concern of the Family Court should be for disposal of the matter and in my opinion it has rightly proceeded in the matter refusing to entertain the petition filed for enhancement of interim maintenance. So far as delay in disposal of application for interim maintenance is concerned, the learned trial court is duty bound to take into consideration the fact at the time of passing of the final orders but the same could not be made a condition precedent for disposal of the matrimonial case.



6. So, I do not find any error of jurisdiction in passing the impugned order by the learned Family Court and therefore, the order impugned is affirmed and as a result the present petition stands dismissed with the aforesaid observation.

7. The learned Family Court is further directed to take up the matter for final disposal since evidence of the parties have already been closed and the matter needs to be disposed of at the earliest preferably within a period of three months.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	20.08.2024
Transmission Date	N/A

