

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.456 of 2018

In
Miscellaneous Jurisdiction Case No.1762 of 2017

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Rishi Kesh Kumar S/o Sri Ram Bilas Singh resident of Quarter No. 12 D/12,
West Anandpuri, Boring Canal Road, P.S.- Sri Krishnapuri, District- Patna
... .. opposite party/ Petitioner

Versus

1. Minakshi Kumari W/o Rishi Kesh Kumar, D/o Sri Umesh Prasad Chaudhary presently residing at Mohalla- Baikuthpuri, Aishwarya Lok, Near Bairiya Bus Stand, P.S. Ahiyapur, District- Muzaffarpur.
2. Umesh Pd. Chaudhary S/o Late Bashishta Narain Choudhary resident of Mohalla- Baikhuntpur, Ashray Lok, Near Bairiya Bus Stand, P.S.- Ahiyapur, District- Muzaffarpur.
3. Saket Suman S/o Sri Umesh Pd. Chaudhary resident of Mohalla- Baikhuntpur, Ashray Lok, Near Bairiya Bus Stand, P.S.- Ahiyapur, District- Muzaffarpur.

... .. Opposite parties / Opposite Parties

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Appearance :

For the Petitioner/s :	Mr. Vivekanand Prasad Singh, Advocate
For the Opposite Party/s :	Mr. Arvind Kumar Pandey, Advocate
	Mr. Jitendra Prasad Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
C.A.V. JUDGMENT

Date : 30-04-2019

This civil review application has been preferred for reviewing the order dated 29.08.2018 passed by this Court in M.J.C. No. 1762 of 2017 by which the Court had allowed the application and directed transfer of the records of Matrimonial Case No. 1336 of 2017 to the court of learned Principal Judge, Family Court, Muzaffarpur.

It is submitted by learned counsel for the petitioner that in course of hearing of the M.J.C.No. 1762 of 2017, this Court was not properly assisted by the learned counsel appearing on



behalf of O. P. No. 1. There is not even whisper of his submission recorded in the order nor he seems to have approached the Court with written submission on behalf of O. P. No. 1. It is submitted that the application has been disposed of and finalized as no contention raised at the bar on behalf of the O. P. No.1 and it shows as if the O.P. No. 1 had nothing to say in this regard.

In this case notice was issued to the opposite party who had appeared and filed his counter affidavit.

It is stated that the M. J.C. application was disposed of after hearing both the parties. It is further submitted that the contention of the petitioner that the order passed by this Court nowhere discusses the submissions on behalf of the petitioner is not correct inasmuch as it would appear that this Court had passed the order in the interest of the parties to restore the conjugal rights as the petitioner has himself filed an application under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights and if the petitioner visits Muzaffarpur where the opposite party is residing with her parent, there was every possibility of restitution of conjugal rights.

It is submitted that the petitioner is only interested in harassing the O. P. No. '1' by compelling her to come Patna to



attend the case of restitution of conjugal rights even though the opposite party no. '1' was looking for him at Muzaffarpur as a step towards the restitution of conjugal rights if he is really interested in the same.

In course of argument learned counsel for opposite party no. 1 has submitted that recently in the case of **M/s Usha International Ltd. Vs. The Commissioner of Commercial Taxes, Bihar and others** reported in **2019 (1) PLJR 872** a Division Bench of this Court (to which I am a member of the Bench) held that a review petition should not be normally filed by a change of lawyer as it is likely to set a bad precedent. It is submitted that the order was passed only in view of the submissions made at the Bar and non-recording of the submission of the opposite party no. 1 in the said case (the husband) was only because both the parties had expressed their willingness to go for restitution of conjugal rights.

After hearing the learned counsel for the parties and on perusal of the records, this Court finds that the present review application has been filed by a change of lawyer. On 06.03.2019 when the matter was taken up for consideration, this Court passed the following order:

“Learned counsel representing the opposite party Nos. 1 & 2 submits that he would file



Vakalatnama on behalf of opposite party No. 3 also. A prayer for two weeks time has been made to file reply to the review application.

It appears that the present review application has been filed by a change of lawyer. The question as to whether the review application should be entertained in the present circumstance when it has been presented by change of lawyer without following the guidelines of the Hon'ble Division Bench of this court in the case of **Rotary Club, Begusarai etc. Vs. State of Bihar** reported in **AIR 2001 Patna 115** and the subsequent Division Bench judgment of this court passed in **Civil Review No. 467/2018** in the case of **M/s Usha International Ltd. Vs. The Commissioner of Commercial Taxes, Bihar and others** reported in **2019 (1) PLJR 872** shall be considered on the next date.

Put up this case on 3rd April, 2019.”

Learned counsel for the petitioner in course of his submission could not satisfactorily explain as to why the judgment of the Hon'ble Division Bench as noticed above by this Court has not been taken care of and the procedures whereunder the previous learned Advocate should have verified the facts as stated in the review application or in case he was unable to verify the same and a change of lawyer was necessitated then the requisite affidavit should have been filed, has not been complied with while filing the review application.



Perusal of the entire ordersheet of M.J.C. No. 1762 of 2017 would show that on 30.10.2017, this Court had issued notice to the opposite party in the M.J.C. Application and further proceeding in the matrimonial court was stayed on the said date. The other non-contesting opposite parties in the said M.J.C. Application were the father and brother of the wife of the present petitioner who were arrayed as O.P. No. 2 and 3 in the matrimonial case. Those were made opposite parties in the M.J.C. Application. The father of the present petitioner had received the notice on 15.01.2018. This petitioner being O. P. No. 1 appeared in the M.J.C. Application. Thereafter, the case remained pending for consideration. Although the petitioner had filed the counter affidavit in the M.J.C. Application but as it would appear from the order dated 29.08.2018 that the wife of this petitioner had brought a maintenance case at Muzaffarpur, she had a daughter aged about one and half year old and there was no male member in the family to accompany her to visit the Court at Patna on the date fixed in the matter, therefore, in course of argument it transpired that if the petitioner being husband is looking for restoration of conjugal rights, considering what had been argued at the Bar, it was just and proper to transfer the records of the case to the court of



Muzaffarpur.

It appears that in the order dated 29.08.2018 this Court did not record any opposition of the husband (petitioner) as what had transpired in the proceeding had led to a understanding that the petitioner is looking for restitution of conjugal rights, therefore, by visiting to the place of his wife he would be moving towards the restitution of conjugal rights, more so when on behalf of the wife it was stated at the Bar that she would be ready to receive the petitioner at her place with an intention to restore the conjugal rights. It is not the case of the petitioner in the review application that the order was not dictated in presence of learned counsel for the petitioner who was then representing him and that the review application has not been filed through the said learned Advocate would go a long way to show that the order proposed to be passed by this Court on 29.08.2018, in presence of the parties were only after weighing the entire facts and circumstances of the case. On many occasions the Court believes the submission made at the Bar and for some reason the consensus is not recorded in the order. Had the earlier set of lawyer been appearing in the case at the review stage, the circumstance under which the order dated 29.08.2018 was passed would have been clear. The learned



Advocate representing the petitioner in the M.J.C. would have been the best person to say as to why the order did not record any contest.

In the case of **M/s Usha International Ltd.** (supra) while relying upon the earlier Division Bench of this Court in the case of **Rotary Club, Begusarai etc.** (supra) the Hon'ble Division Bench of this Court had occasion to consider the review application which was filed by a change of lawyer. The Hon'ble Division Bench reiterated its views expressed in **Rotary Club, Begusarai etc.** (supra) as under:

“.....Recourse to review by change of lawyers is normally deprecated by Courts. The practice becomes all the more reprehensible when review is sought on grounds pertaining to the previous conduct of the case or other grounds of fact normally within the knowledge of the previous lawyer(s). To my mind a lawyer must be very reluctant to take up a brief of review unless he had appeared in the case, the order passed in which is the subject of review. In case for some reasons a change of lawyer is unavoidable, the newly engaged lawyer would owe it to himself and to the profession to have the statement of facts duly verified by the lawyer earlier conducting the case. In case a review is filed by a new lawyer a certificate ought to be appended to the review petition, preferably by the previous counsel, stating that the facts stated in the petition were correct or alternatively by the newly engaged lawyer testifying that he had got the facts stated in the review petition



verified by the previous lawyer.....”

In the review application what is important to be seen is that if an error has occurred because of mistake of the Court or for any other reason which is likely to cause injustice to a party, the same is required to be corrected.

This Court is of the considered opinion that this review application by a change of lawyer is liable to be rejected in view of the Division Bench judgment of this Court in the case of **Usha International** (Supra) . After following the basic principle of review, this Court is of the considered opinion that in the nature of the present proceeding no injustice has been caused to the present petitioner by directing transfer of the records of the matrimonial case from the court at Patna to the court at Muzaffarpur where the maintenance case is also pending. The only ground on merit for review of the order passed by this Court is that the petitioner is presently posted at Mumbai and while it will be convenient for him to visit Patna on the date fixed in the matter, if he is required to go Muzaffarpur he will be required to take one more day of leave. It is to be remembered that the petitioner has filed the application for restitution of conjugal rights, if it is the ultimate intention of petitioner to restore the relationship, the kind of plea which has been now sought to be raised in the review



application to avoid visiting Muzaffarpur cannot be taken as a bona fide plea. The kind of hardship being faced by the wife of the petitioner has already been taken note of hereinabove.

This review application has, thus, no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	
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