

GAHC010020132023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Mat.App./30/2023

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S/O KRIPESH CHNADRA DAS, R/O C/O PROJESH DAS SUKANTA SARANI,
SHIBALIK PARK, P.O.- MEHERPUR, P.S.- SILCHAR, DIST.- CACHAR, PIN-
788015.

VERSUS

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W/O KISHORE CHNADRA DAS, D/O ASHUTOSH DAS, R/O RADHA NAGAR
COLONY, BADARPUR TOWN (NEAR HANUMAN MANDIR), P.O. AND P.S.-
BADARPUR, DIST.- KARIMGANJ, PIN- 788806.

Advocate for the Petitioner : MR. R A CHOUDHURY

Advocate for the Respondent : MR. S D PURKAYASTHA

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

26.06.2023

Heard Mr. R.A. Choudhury, learned counsel for the petitioner and Mr. S.D. Purkayastha, learned counsel for the respondent.

2. The order dated 28.11.2022, passed in Misc [J] Case No. 13/2022,

passed by the learned District Judge, Hailakandi is impugned in this appeal under Section 19 of the Family Court Act, 1984.

3. It is to be mentioned here that vide impugned order the learned court below had directed the petitioner to pay a sum of Rs. 15,000/- per month being the interim maintenance [pendent lite] to the respondent from the date of the order and also directed to pay an amount of Rs. 10,000/- being expenses for the proceeding to the respondent.

4. The background facts leading to filing of the present appeal is adumbrated herein below:-

“The appellant had filed a case being F.C. [Civil] Case No. 212/2021, under Section 13[I][a] of the Hindu Marriage Act, 1955 for divorce on the ground of cruelty. The respondent also filed a Misc case, being Misc. [FC] Case No. 6/2021, under Section 24 of the said act for granting maintenance pendent lite [interim]. Thereafter, this court vide order dated 31.05.2022, passed in Transfer Petition [Civil] No. 56/2021, filed by the respondent, pleased to direct the learned Principal Judge, Family Court, Cachar, Silchar to transfer the records of F.C. [Civil] No. 212/2021, to the court of learned District Judge, Hailakandi. Accordingly, the aforesaid cases were transferred and renumbered/re-registered as T.S. [Divorce] Case No. 46/2022, followed by Misc [J] Case No. 13/2022. Thereafter, hearing learned counsel for both the parties, the learned court below, in Misc [J] Case No. 13/2022,

has passed the impugned order and directed the appellant to pay interim maintenance [pendent lite] @15,000/- per month from the date of the order and also directed to pay a sum of Rs. 10,000/- being the cost of the proceeding to the respondents.”

5. Perused the petition as well as the documents placed on record and also the impugned order dated 28.11.2022, passed by the learned District Judge, Hailakandi in Misc [J] Case No. 13/2022.

6. It has come to the notice of this court, during the course of hearing that the concerned parties have not filed any affidavit disclosing their assets and liabilities, while the learned court below had taken up the matter and passed the impugned order dated 28.11.2022.

7. In the case of **Rajnish vs. Neha**, reported in **2021 2 SCC 324 in paragraph No. 129**, the Hon’ble Supreme Court has held that the parties have to file their affidavit of disclosure of assets and liabilities in annexure I, II and III of the said judgment as may be applicable in all maintenance proceeding including pending proceeding before the Family Court/District Court/Magistrate Court as the case may be throughout the country.

8. As the direction of the Hon’ble Supreme Court in paragraph No. 129, which is mandatory in nature and binding upon all the courts of subordinate to it, has not been followed by the learned court below and also concerned parties, this court is inclined to set aside the impugned order dated 28.11.2022 and remand the matter to the learned court below to decide the matter including the

cost of litigation afresh, after giving opportunity to file affidavit of disclosure of assets and liabilities to both the parties. In the result this appeal is allowed to the extent indicated above. The parties are directed to appear before the learned court below on 10.07.2023.

9. Having considered the nature of urgency and also having regard to the submission of learned counsel for both the parties, the learned court below is requested to make an endeavor to dispose of the matter within 2 [two] months days from today.

10. In terms of above, this appeal stands disposed of.

JUDGE

Comparing Assistant