

GAHC010057162023



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

Case No. : I.A.(Civil)/725/2023

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

VERSUS

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Linked Case : Mat.App./9/2023

SUPRATIM CHOUDHURY,
S/O DR. BIRESH RANJAN CHOUDHURY R/O C.R. AVENUE LANE NO. 1
NATIONAL HIGHWAY RAOD SILCHAR P.O. AND P.S. SILCHAR DIST.
CACHAR ASSAM

VERSUS

MONIDIPA DEB
W/O SUPRATIM CHOUDHURY
R/O MALUGRAM DEVI PRASAD ROAD
P.O. AND P.S. SILCHAR DIST. CACHAR ASSAM

For the Applicant/Appellant : Mr. S.P. Choudhury, Advocate.

For the Respondent : Ms. P. Bhattacharya, Advocate.

BEFORE
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

20.03.2023

[Sandeep Mehta, CJ]

The instant appeal under Section 19 of the Family Court's Act, 1955 is directed against the judgment and order dated 07.12.2022 passed by the learned Principal Judge, Family Court, Silchar in F.C. (Civil) Misc. Case No.27/2017 arising out of F.C. (Civil) Case No.183/2017.

2. The matter comes up for orders on I.A.(Civil) No.725/2023 preferred by the appellant seeking stay of the operation of the order dated 07.12.2022 passed by the Court of learned Principal Judge, Family Court, Cachar at Silchar in F.C. (Civil) Misc. Case No.27/2017 arising out of F.C. (Civil) Case No.183/2017 whereby the learned Family Court awarded a sum of Rs.1,500/- (Rupees one thousand five hundred) per month as maintenance *pendente-lite* from the date of the filing of the application i.e.18.08.2017 till disposal of the main suit and a sum of Rs.10,000/- (Rupees ten thousand) only as cost of proceedings to the respondent-wife of the appellant.

3. With the consent of the learned counsel for the parties, arguments on the main appeal, Mat. App. No.9/2023 have been heard.

4. Learned counsel for the appellant has vehemently and fervently urged that the impugned judgment is bad in the eyes of law because the respondent wife did not present any documentary evidence so as to support her claim regarding the appellant's income. He thus contended that the learned Family

Court was totally unjustified in awarding maintenance *pendente-lite* to the respondent at the rate of Rs.1,500/- (Rupees fifteen hundred) only per month and that too from the date of filing of the application. He thus implored the Court to accept the appeal and quash the impugned judgment.

5. Per contra, learned counsel representing the respondent urged that the pittance of Rs.1500/- per month awarded by the learned Court below as maintenance *pendente-lite* to the wife cannot be said to be excessive and rather the same is on the extreme lower side. She urged that as the respondent did not present the affidavit in terms of Hon'ble Supreme Court judgment in the case of ***Rajnish Vs. Neha***, reported in **(2021) 2 SCC 324**, the Family Court was justified in awarding maintenance to the respondent. She rather contended that as a matter of fact, it is a fit case wherein the direction deserves to be issued to the Family Court to enhance the amount of maintenance *pendente-lite* awarded to the respondent.

6. We have given our thoughtful consideration on the submissions of the learned counsel for the parties and perused the impugned order and the pleadings of the parties.

7. A perusal of the judgment dated 07.12.2022 which is assailed in this appeal would indicate that the Family Court had earlier directed the appellant to pay a sum of Rs.2,000/- (Rupees two thousand) only per month to the respondent wife as interim maintenance by the order dated 17.02.2021. Thus, apparently, the wife was not getting any monetary relief prior to the passing of the said order. Hon'ble Supreme Court in the case of ***Rajnish- Vs. Neha*** (supra) has categorically laid down that both the parties must file affidavits for assessing their assets and liability in maintenance proceedings.

8. True it is that the respondent herein did not lead any documentary evidence in support of the claim for maintenance. However, the fact remains that the respondent wife has averred in the main application as well as the application for interim maintenance that the appellant husband is having significant assets and sources of income.

9. Apparently, since the appellant herein is self-employed, it would be extremely difficult for the estranged wife to procure documentary evidence so as to establish his exact income. Nonetheless, we cannot lose sight of the fact that the Family Court has awarded a pittance of Rs.1,500/- per month by way of maintenance *pendente-lite* to the wife. The maintenance application was filed in the year 2017 and could be decided as late in the year 2022. During the intervening period, the husband was directed to pay interim maintenance to the wife with effect from 18.08.2017. Apparently, the amount already paid on this count by the husband would be set off against the final amount due towards the arrears of maintenance which would accrue on account of the order being made effective from the date of filing of the application.

10. In this background, we are of the firm view that the impugned order dated 07.12.2022 passed by the learned Principal Judge, Family Court, Cachar at Silchar in F.C. (Civil) Misc. Case No.27/2017 arising out of F.C. (Civil) Case No.183/2017 does not suffer from any infirmity either factual or legal warranting interference by this Court.

11. As a consequence, the appeal fails and is dismissed as being devoid of merit.

12. All pending applications, including I.A. (Civil) No.725/2023, are also

disposed of.

13. No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant