

GAHC010113532024



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

**Case No. : CRP(IO)/218/2024**

PARTHA BAIDYA  
S/O- LATE ASHUTOSH BAIDYA,  
R/O- J P R ROAD, JORHAT TOWN, P.O AND P.S- JORHAT, DIST- JORHAT,  
ASSAM

VERSUS

DIPALI DAS BAIDYA  
W/O- PARTHA BAIDYA,  
D/O- DHANINDRA DAS ,  
R/O- VILLAGE PATIDOI BHERELA,  
P.O- GORUBONDHA MISAMARI,  
P.S- MISAMARI, DIST- SONITPUR, ASSAM, PIN-784506

**Advocate for the Petitioner** : MR G N SAHEWALLA, MS K SARMA,MS K BHATTACHARYYA,MS T J SAHEWALLA,MR H K SARMA,MS. S. TODI

**Advocate for the Respondent** : ,

**BEFORE**  
**HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

**ORDER**

**01-10-2024**

**1.** Heard Mr. G. N. Sahewalla, learned Senior counsel assisted by Ms. S. Todi,

learned counsel for the petitioner.

**2.** Though, the notice issued by this Court has been duly served upon the respondent, however, none has appeared for the respondent. This revision petition is, therefore, heard *ex-parte*.

**3.** This application under Article 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure, 1908 has been filed by the petitioner Shri Partha Baidya impugning the judgment and order dated 18.04.2024 passed by the learned District Judge, Jorhat in Misc. (J) Case No. 24/2023 in connection with Title Suit (M) No. 91/2021.

**4.** By the impugned order, the Trial Court had allowed the application filed by the respondent under Section 24 of the Hindu Marriage Act, 1955 granting maintenance allowance of Rs. 16,000/- per month to the respondent and her minor son along with a litigation cost of Rs. 50,000/- and an additional amount of Rs. 3,000/- on the dates when the respondent appears before the Court of learned District Judge, Jorhat in connection with the aforementioned suit.

**5.** Mr. G.N.Sahewalla, learned Senior counsel for the petitioner has submitted that by the impugned judgment and order dated 18.04.2024 the Trial Court, while fixing the quantum of interim maintenance to be paid by the petitioner to the respondent, has failed to take into account the affidavit of assets and liabilities filed by the present petitioner as well as NOC dated 25.01.2023 from which it is apparent that monthly income of Rs. 64,858/-, earned through the business was to be divided among five family members and thereafter the earning of the petitioner comes around Rs. 12,971/-.

**6.** Learned Senior counsel for the petitioner has also submitted that the Trial Court has also erred in not taking into account the statement made on oath in

the affidavit of assets and liabilities by the petitioner to the effect that the respondent is presently living in her parents' residence and running her transport business and also sharing the house rent proceeds of the rented property.

**7.** Learned Senior counsel for the petitioner has submitted that the petitioner, considering his earning capacity, is able to pay the litigation cost of Rs. 50,000/- in installment only. He also submits that the petitioner is ready to pay the cost of Rs. 3,000/- on every date of appearance, by the respondent, before the Trial Court. However, he submits that considering the earning capacity of the petitioner as revealed from his affidavit of assets and liabilities the interim monthly maintenance to be paid to the petitioner and her son may be reduced.

**8.** I have considered the submissions of learned Senior counsel for the petitioner as well as gone through the materials on record including the affidavit of assets and liabilities.

**9.** Considering the fact that according to the affidavit of assets and liabilities, submitted by the petitioner before the Trial Court, the earning from the business has to be divided equally amongst five members of the family and on doing so the earning of the petitioner would come to near about Rs. 13,000/-. Also considering the fact that the said aspect was not taken into consideration by the learned District Judge, Jorhat while, fixing the quantum of interim maintenance to be paid to the respondent and her minor son, this Court is of the considered opinion that the amount of interim maintenance payable to the respondent and her minor son, during the pendency of the Title Suit (M) No. 91/2021 needs to be modified.

**10.** By order dated 28/06/2024, this court has directed the petitioner to pay an

amount of the Rs. 4000/- per month to the respondent for our monthly maintenance along with her minor son. The said amount appears to be approximately 25% of the income of the petitioner which remained with him after division of the total earning amongst five members of the family. This court is of considered opinion that, under the facts and circumstances of this case, the said amount may be regarded as just and reasonable amount of interim maintenance, which the petitioner has to pay to the respondent and her minor son during the pendency of the Title Suit (M) No. 91/2021.

**11.** The petitioner is, therefore, directed to pay an amount of Rs, 4000/- as the interim monthly maintenance, to the respondent and her minor son, during the pendency of the Title Suit (M) No. 91/2021.

**12.** As regards litigation expenses of ₹ 50,000/-is concerned, same shall be paid by the petitioner to the respondent in eight equal instalments of ₹ 6,250/- each in every month.

**13.** In addition to the above, the petitioner shall also pay an amount of ₹ 3000/- as and when the respondent appears before the Trial Court, in Title Suit (M) No. 91/2021, at Jorhat.

**14.** The impugned order is accordingly modified to the extent indicated here in above and this revision petition is accordingly disposed of.

**JUDGE**

**Comparing Assistant**