

GAHC010202232023



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

Case No. : CRP(IO)/298/2023

MANASH JYOTI RAJKHOWA
S/O MONIKANTA RAJKHOWA, A R/O VILL-TENGAKHAT, PANIMUDI GAON,
P.O. AND P.S.-TENGAKHAT, DIST-DIBRUGARH, ASSAM

VERSUS

SMTI RUNI SONOWAL
W/O SRI MANASH JYOTI RAJKHOWA, D/O SRI TARUN SONOWAL, A R/O
RAJA ALI, KHEREMIA, P.O.-RAJA ALI, P.S.-DULIAJAN, DIST- DIBRUGARH,
ASSAM

Advocate for the Petitioner : MR. A R BHUYAN

Advocate for the Respondent : MS P HUJURI (FOR CAVEATOR)

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT & ORDER (ORAL)

Date : 15-03-2024

This is an application under Article 227 of the Constitution of India challenging the order dated 28.07.2023 passed by the learned Additional District Judge, Dibrugarh in Misc(J) Case No. 37/2022 arising out of T.S. (D) Case No.

45/2022.

2. From the materials on records, it reveals that the respondent herein as petitioner had filed an application under Section 13(1)(ia)/13(1)(ib) of the Hindu Marriage Act, 1955, seeking dissolution of the marriage between the petitioner and respondent. Along with that the respondent herein also sought for a permanent alimony of Rs.30,00,000/- (Rupees Thirty Lakhs). In the said proceeding, written statement has already been filed by the petitioner herein. It is also relevant herein to mention that the respondent herein filed an application seeking maintenance *pendent-lite* @ Rs.30,000/- (Rupees Thirty Thousand) per month from the date of filing of the said case along with a sum of Rs.20,000/- (Rupees Twenty Thousand) as expenses for the said proceedings. The said application was registered and numbered as Misc (J) Case No. 37/2022.

3. The learned Court of Additional District Judge, Dibrugarh vide the order dated 18.05.2023 after taking account the various details had directed the petitioner herein to pay Rs.30,000/- (Rupees Thirty Thousand) every month to the respondent herein as maintenance for herself and her two minor children without fail. The said order was made effective from the date of filing of the case. However, the prayer of the respondent herein seeking a sum of Rs.20,000/- (Rupees Twenty Thousand) as expenses of the proceedings was rejected at that stage with an observation that the same would be considered at the time of the disposal of the main divorce suit.

4. The petitioner herein being aggrieved, approached this Court challenging the said order dated 18.05.2023 passed in Misc (J) Case No. 37/2022.

5. This Court after hearing the parties vide the order dated 27.06.2023 directed the petitioner herein to pay the monthly educational expense for his

two children to the tune of Rs.15,500/- (Rupees Fifteen Thousand Five Hundred) per month and also a sum of Rs.15,000/- (Rupees Fifteen Thousand) being the maintenance to the respondent herein. It is also seen from the perusal of the said order of this Court dated 27.06.2023 that the said order was a consent order. Paragraph 8 of the said order being relevant is reproduced hereunder:

“8. Having considered all the facts and circumstances and also considering the submissions of learned advocates of both sides and also as agreed by them and balancing the equities between the parties, this Civil Revision Petition stands disposed of by directing the petitioner to pay the monthly educational expense for his two children to the tune of Rs.15,500/- per month and also a sum of Rs.15,000/- being the maintenance to the respondent.”

6. This Court further finds it relevant to take note of that the respondent herein had filed an application on 11.07.2023 stating inter-alia that the petitioner herein had not deposited the *pendent-lite* maintenance of eight months totaling Rs.1,20,000/- (Rupees One Lakh Twenty Thousand) and as such, sought for a direction upon the petitioner herein to clear the balance arrear on the next date and also to regularly pay the *pendent-lite* maintenance.

7. It further reveals that the petitioner herein had also submitted a petition on 19.07.2023 stating inter-alia that it is a fact that he has deposited Rs.15,000/- (Rupees Fifteen Thousand) towards *pendent-lite* maintenance for the month of July in the Court as this Court had directed him to pay a sum of Rs.15,000/- (Rupees Fifteen Thousand) as maintenance. It was also mentioned that that so far as the educational expenses are concerned the petitioner herein have been paying the educational expenses regularly separately. Further to that it was mentioned that the liability to pay the maintenance amount commences from 27.06.2023 only and not retrospectively from the date of filing of the

petition as because this Court had not directed the respondent to pay the maintenance on and from the date of filing of the petition. It is therefore the contention of the petitioner herein in the said petition before the learned Trial Court that there is no balance arrear *pendent-lite* maintenance as claimed by the respondent herein in her petition dated 11.07.2023.

8. The learned Trial Court vide order dated 28.07.2023 after hearing the parties allowed the petition of the respondent herein and rejected the petition of the petitioner herein and directed the petitioner herein to clear the arrear of the maintenance within the next date fixed without fail.

9. Against the said order dated 28.07.2023 the instant proceedings have been initiated.

10. It reveals from the records of this case that this Court sent the present proceedings for mediation. In the order dated 12.10.2023, this Court on account of mediation proceedings going on, stayed the enforcement of the order of maintenance from the date i.e. the order of the learned Trial Court dated 02.11.2022, passed in Misc (J) Case No. 37/2022. However, there was a categorical direction that the current maintenance shall be paid by the petitioner herein to the respondent herein timely on each month. Thereupon, the instant proceedings had been listed before this Court on various occasions. It has also been brought to the attention of this Court that the mediation proceedings have also failed.

11. This Court have duly heard Mr. A.R. Bhuyan, learned counsel appearing on behalf of the petitioner and Mr. A. Bhatra, learned counsel appearing on behalf of the respondent. This Court had duly taken note of the order dated 18.05.2023 passed by the learned Trial Court in Misc (J) Case No. 37/2022

wherein the petitioner herein was directed to pay Rs.30,000/- (Rupees Thirty Thousand) every month to the respondent as maintenance of herself and her two minor children without fail. It was also mentioned that the said order would be made effective from the date of filing of the case. From the perusal of the said order, it is therefore clear that the direction was specific on the aspect of maintenance of the respondent herein and her two minor children.

12. The said order dated 18.05.2023 was put to challenge before this Court in CRP (IO) No. 181/2023. This Court passed the order dated 27.06.2023 in CRP(IO) No. 181/2023 with a due consent of both the parties. It is pertinent to mention that there was no interference to the order dated 18.05.2023 so far as the direction to pay the said amount of maintenance from the date of filing of the case.

13. In this regard, this Court finds it very pertinent to take note that that Explanation V to Section 11 of the Code of Civil Procedure, 1908 which stipulates that if any relief was claimed in the plaint, which was not expressly granted by the decree, it shall, for the purpose of the said section be deemed to have been refused. Appreciating the said provisions it would be seen that vide the order dated 27.06.2023 this Court did not in any manner interfere with the said direction to pay the maintenance from the date of filing of the case by the respondent herein. The application so filed by the petitioner herein on 19.07.2023 before the learned Trial Court was therefore completely misconceived. It was a bogey to delay the payment of the dues to which the respondent herein was entitled to. It is the opinion of this Court that the learned Trial Court in its order dated 28.07.2023 did not commit any illegality and as such, the question of interference with the said order does not arise, moreso, in a proceeding under Article 227 of the Constitution.

14. At this stage, the learned counsel appearing on behalf of the petitioner herein submits that the petitioner is willing to deposit the amount of Rs.1,20,000/- (Rupees One Lakh Twenty Thousand) but he submits that some time may be granted.

15. This Court has put a specific query upon the learned counsel for the petitioner as within what time the said amount shall be paid. He submitted as per his instructions that the said amount would be paid within a period of four months from the date of the instant order, in installments.

16. Taking into account the above, this Court directs the petitioner herein to clear the arrear amount of Rs.1,20,000/- (Rupees One Lakh Twenty Thousand) on or before 15th July, 2024. This Court further directs that on or before 15th April, 2024, the petitioner shall deposit Rs.30,000/- (Rupees Thirty Thousand); on or before 15th May, 2024, the petitioner shall deposit another Rs.30,000/- (Rupees Thirty Thousand); on or before 15th June, 2024, the petitioner shall deposit another Rs.30,000/- (Rupees Thirty Thousand) and the last installment of Rs.30,000/- (Rupees Thirty Thousand) be deposited on or before 15th July, 2024. Failure to do so shall be regarded as breach of an undertaking given before this Court and consequential actions therefore would arise.

17. Before concluding, this Court finds it pertinent to take note of the submission of Mr. A. Bhatra, learned counsel for the respondent herein to the effect that the petitioner herein is not paying the maintenance in terms with the order dated 18.05.2023 which stood modified by the order dated 27.06.2023 by this Court. Liberty is given to the respondent herein to take appropriate steps before the learned Trial Court for enforcement of the due order as per law.

18. With the above, the instant proceedings stand disposed of.

JUDGE

Comparing Assistant